S. Hrg. 99-312

PYRAMID LAKE PAIUTE AND TRUCKEE RIVER SETTLEMENT ACT OF 1985

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED
WATER AND RESOURCE CONSERVATION

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1558

TO SETTLE CERTAIN CLAIMS AFFECTING THE PYRAMID LAKE PAIUTE
INDIAN TRIBE OF NEVADA, AND FOR OTHER PURPOSES

OCTOBER 21, 1985

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Committee on Energy and Natural Resources

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PYRAMID LAKE PAIUTE AND TRUCKEE RIVER SETTLEMENT ACT OF 1985

MONDAY, OCTOBER 21, 1985

U.S. SENATE, SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Malcolm Wallop presiding.

Present: Senators Wallop and Hecht.

Also present: Tony Bevinetto, professional staff member, and Thomas B. Williams, professional staff member for the minority.

OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator WALLOP. The subcommittee will come to order, and good morning.

The hearing this morning is on S. 1558, a bill to enable the Pyramid Lake Paiute Indian Tribe and local non-Indian interest groups to settle longstanding conflicts to the use of water from the Truckee, Carson, and Walker River systems, which arise high in the Sierra Nevada Mountains in California and make their way to Nevada. There the Truckee, Carson, and Walker Rivers sustain life, farming, and commerce for the Paiute Indian Tribe, and residents of Reno, Sparks, and Washoe County as well, as the irrigators of the Newlands Irrigation District.

Introduced by my colleagues, Senators Laxalt and Hecht, title II of the bill would ratify an interstate compact between the States of California and Nevada, allocating the waters of the Carson, Walker, and Truckee Rivers between these two States.

Since 1909, water resource conflicts on these three river systems involving issues of water rights, water quality standards, endangered species, and the overall management of Federal reclamation projects have engaged every significant water rights holder and agency for water resources in the Truckee Basin.

The legal issues in these cases reflect the intense competition for a limited water supply in this dry region of the United States, a water supply which meets neither present nor future needs for Indians or non-Indians.

To date, the forum for controversies over water between Indians and non-Indians has largely been the courts. Yet the length and complexity of Indian reserved water rights litigation has shown us that litigation may not be the answer.

If Indian claims to water, whether illusory or valid, are to move from legal abstraction to beneficial use, it is important that Indian and non-Indian policymakers understand the water needs and priorities of Indian tribes.

Conversely, Indian people must be sensitive to the needs of non-Indian water right holders and the responsibilities of States and local governments to their citizens. Neither, can the Federal rights and interests be ignored.

Constructive solutions must be found for all interests or litigation will continue, as water becomes even more scarce with increased growth in the future.

The bill before us today is unusually complex. It is also somewhat unusual in that it is driven, in part, by a court decision which has basically held that the provisions of the Endangered Species Act take priority over the authorized water uses of the Stampede Reservoir, which, though authorized in part for fish, was also constructed to provide municipal and industrial water and a power supply for the cities of Reno and Sparks.

While I am not personally comfortable with all of the precedents which the bill proposes to impose upon the Secretary of the Interior, I am impressed with the creative way in which the parties to the settlement agreement have agreed to tradeoffs which would allow the Secretary of the Interior to manage the waters of these three river systems in a way which would regulate the timing of water releases in order to benefit the enhancement of the endangered and threatened fish, while still allowing other uses of the water.

It has been said that the challenge of the future lies in institutions of government and people working together to bring about equitable, creative solutions to present day conflicts over water.

While the path may be rocky, indeed it is vital that a way be found to do such things.

Without objection, I will place a copy of the bill in the hearing record.

[The text of S. 1558 and comments from the Department of Justice follow:]

99TH CONGRESS
1ST SESSION

S. 1558

To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 1 (legislative day, JULY 16), 1985

Mr. LAXALT (for himself and Mr. HECHT) introduced the following bill; which was read twice and referred jointly to the Select Committee on Indian Affairs, and the Committees on Energy and Natural Resources and the Judiciary. Provided that if the Select Committee on Indian Affairs reports the bill, the Committees on Energy and Natural Resources and the Judiciary have fifteen calendar days in which to report the measure or be discharged

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A BILL

To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pyramid Lake Paiute and Truckee River Settlement Act of 1985".

TITLE I—TRUCKEE RIVER SETTLEMENT

SEC. 101. For the purposes of this title, the Congress finds that—

(1) Pyramid Lake, a desert lake into which the Truckee River flows and which has no outflow, is an important natural resource which is situated within the Pyramid Lake Indian Reservation;

(2) the fish resources of Pyramid Lake include the Lahontan cutthroat trout and the cui-ui, which are listed in 50 CFR 17.11(h) and which have been designated by the Secretary of the Interior as threatened and endangered species, respectively;

(3) rights to the waters and flows of the Truckee River are the subject of existing and prospective lawsuits involving numerous parties in Nevada, including among others the Pyramid Lake Paiute Tribe, major agricultural interests, water districts, and the cities of Reno and Sparks and Washoe County, Nevada;

(4) although some of these lawsuits have resulted in decisions by the Ninth Circuit Court of Appeals and the United States Supreme Court, such decisions have not yet resolved all controversies among the parties; and, unless pending litigation is settled, there will continue to be proceedings in the courts;

(5) these lawsuits not only will prove expensive and time consuming for all participants but also could have a profoundly adverse impact upon all the parties and the economies of Nevada;

(6) the parties to the lawsuits have diligently attempted to settle these claims and have stated to the relevant committees of the Senate and the House of Representatives their interest in settling the controversies and litigation surrounding the various claims affecting the Truckee River, Pyramid Lake and its fish resources, and Stampede Reservoir;

(7) it is the long-term interest of the United States, the State of Nevada and its political subdivisions, the State of California, the Pyramid Lake Paiute Tribe, and other communities of Nevada that the United States and the State of Nevada provide a stimulus for and assist in the implementation of a permanent settlement of such litigation; and

(8) to the extent a settlement is facilitated by this title, settlement will—

(A) permit expensive and lengthy litigation to be resolved by mutual agreement of the parties and in a manner which accommodates to the extent possible the needs of all parties;

(B) enhance the Lahontan cutthroat trout and the cui-ui and their habitat;

(C) assist the economic development of the Pyramid Lake Paiute Tribe; and

(D) provide needed municipal and industrial water for use in the cities of Reno and Sparks and Washoe County, Nevada.

DEFINITIONS

SEC. 102. As used in this title—

(1) the term "Tribe" means the Pyramid Lake Paiute Tribe which is organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476);

(2) the term "Secretary" means the Secretary of the Interior;

(3) the term "Newlands Project" means the project authorized pursuant to the Reclamation Act of June 17, 1902 (43 U.S.C. 395) for reclamation and irrigation of land in the Carson and Truckee River basins;

(4) the term "Washoe Project" means the Reclamation Project authorized pursuant to the Act of August 1, 1956 (43 U.S.C. 614);

(5) the term "Lower Truckee River" means that portion of the Truckee River below Derby Dam;

(6) the term "Pyramid Lake fish resources" means the Lahontan cutthroat trout and the cui-ui;

(7) the terms "enhancement" and "enhance" mean measures and the taking of measures, including natural and hatchery propagation and habitat improve-

ment, necessary and appropriate to improve the biological status of the Pyramid Lake fish resources;

(8) the term "replacement cost" means the then current municipal and industrial water rate charged to the Carson-Truckee Water Conservancy District by the Secretary pursuant to section 105(b);

(9) the term "water year" means the period commencing on October 1 of any year and ending on September 30 the following years; and

(10) the term "by period" means the period of time that the Truckee River system storage is at reduced levels. The indication of such condition shall be when Lake Tahoe is at or below an elevation of 6225.25 feet, Lake Tahoe DATUM, or such other elevation as agreed to by the Secretary, the Tribe, the Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

EFFECT ON EXISTING RIGHTS AND AUTHORITIES

SEC. 103. (a) Nothing in this title shall be construed as—

(1) modifying or terminating any court decree, except as provided by the provisions in subsections (b) and (c) of section 105 and section 111, including those decrees entered in the following cases:

(A) *United States* v. *Alpine Land & Reservoir Co.*, Civ. No. D–183 BRT (D. Nev.);

(B) *United States* v. *Orr Water Ditch Co.*, Equity No. A-3 (D. Nev.); and

(C) *United States* v. *Truckee River General Electric Company*, Civ. No. 14861 in the United States District Court for the Northern District of California (now Civ. No. S-643-LKK in the Eastern District in California), as modified by the Truckee River Agreement incorporated in and made a part of the final decree in, *United States* v. *Orr Water Ditch Co.*, Equity No. A-3, in the United States District Court for the District of Nevada;

(2) diminishing or impairing any property right existing on the effective date of this title; and

(3) providing any Congressional directive binding on the State Engineer of Nevada.

(b) Nothing in this title shall be construed as prohibiting the modification or termination of any court decree upon agreement of the parties to such court decree.

WATER DELIVERIES

SEC. 104. The Secretary shall, acting through the Bureau of Reclamation, deliver annually such quantities of water to the Pyramid Lake Indian Reservation as may be necessary for the maintenance and enhancement of the Pyramid Lake fish resources, wildlife conservation, outdoor recreation, environmental quality, economic development, and other purposes. The Secretary shall be deemed to have satisfied fully this obligation only if—

(1) for the first ten-year period commencing October 1, 1978, and for each succeeding ten-year period commencing one year after the beginning of the preceding ten-year period, the average elevation of Pyramid Lake measured at the end of each water year is not less than 3,794 feet above mean sea level; and

(2) at the end of the first two-year period beginning October 1, 1988, and each succeeding two-year period the elevation of Pyramid Lake is not less than 3,786 feet above mean sea level.

WATER MANAGEMENT

SEC. 105. (a) The Secretary shall take actions as are necessary to meet his obligations under this title. In carrying out such obligations, and notwithstanding any other provision of law, the Secretary may—

(1) acquire by purchase, but not by eminent domain, private lands or interests having water rights;

(2) enter into water exchange agreements with any individual or legal entity;

(3) enter into agreements with Truckee-Carson Irrigation District for rehabilitation and betterment of the Newlands Project, including the T canal pilot lining project, which shall include a component for the improvement of the Stillwater Wildlife Management Area

cy District, the Secretary shall execute a perpetual contract for the sale of water from Stampede Reservoir in the quantity set forth in sections 105(c) and 105(d) for municipal and industrial use in the cities of Reno and Sparks and Washoe County, Nevada and not for the purpose of dilution of sewage effluent.

(c) Upon execution of the contract and for ten years thereafter, Carson-Truckee Water Conservancy District shall be provided a dry period municipal and industrial supply based on an average annual withdrawal from Stampede storage of 6,000 acre feet or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District. To protect the municipal and industrial supply, when Stampede Reservoir storage is at or below 50,000 acre feet, or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, there shall be no releases from Stampede Reservoir made for fishery purposes to the Lower Truckee River.

(d)(1) After the ten years provided in subsection (c) and based upon a projected demand buildup period to be defined by the parties (Secretary, Tribe, Sierra Pacific Power Company), the Carson-Truckee Water Conservancy District shall have the right to withdraw from Stampede Reservoir storage for municipal and industrial purposes, an average of 5,000 acre feet per year or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

(2) The district shall be provided a dry period municipal and industrial supply based on the average annual withdrawal from Stampede Reservoir storage of 15,000 acre feet, or such other amount as agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

(3) To protect the municipal and industrial supply, when Stampede Reservoir storage is at or below 120,000 acre feet or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District there shall be no releases from Stampede Reservoir made for fishery purposes to the Lower Truckee River.

(e) Notwithstanding any other provision of law, the Secretary shall execute a perpetual contract for the sale of such water in addition to the water referred to in subsections (b) through (d) of section 105 to the Carson-Truckee Water Conservancy District from Stampede Reservoir to the extent such water is not required for the Pyramid Lake fish resources.

(f) The allocation of project costs made to municipal and industrial water supply under paragraphs (1) through (4) of subsection (b) of section 105 shall be repayable to the United States in 50 years from the date the conditions of section 107 of this title have been met, under the provisions of the Federal reclamation laws, with right of prepayment, and provided further, that repayment of costs allocated to municipal and industrial water supply shall include interest on the unamortized balance of such allocations at a rate equal to the average rate (which rate shall be certified by the Secretary of the Treasury) paid by the United States on its marketable long term securities outstanding on the date of enactment of the Washoe Project Act (43 U.S.C. 614) and adjusted to the nearest one-eighth of 1 per centum.

(g) Subject to the agreement of the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, Sierra Pacific Power Company shall have the right to accumulate privately owned stored water in Stampede Reservoir to the extent storage is available. Such waters shall be allocated their proportionate share of evaporation loss and in the event water is required to be spilled from Stampede Reservoir such privately owned stored water shall be spilled prior to any Federal water stored in said reservoir.

(h) If any of the lands or interests therein acquired under this title have appurtenant Newlands Project water rights or if any of the agreements entered into under this title provide for the transfer of Newlands Project water rights to non-Newlands Project lands or uses, the Secretary shall each year pay the Truckee-Carson Irrigation District from the funds referred to in section 108(b)(2) or from other funds all operation, maintenance, and other charges that would have been assessed if the acquisition or transfer had not occurred.

(i) The Secretary shall make payments to the State of Nevada and its political subdivisions each year from the funds referred to in section 108(b)(2) or from other funds in lieu of real property taxes or other assessments that would have otherwise been assessed with respect to lands and interests in lands acquired pursuant to this title.

(j) Notwithstanding any other provisions of law, the Secretary is authorized to file an application with the State Engineer of Nevada for a permit to change the point of diversion, place, means, manner, or purpose of use of any water which the Secretary may acquire under this title.

(k) The authority of the Secretary provided in this section shall not be construed to preclude the existence of that authority under other provisions of law.

FISH PROPAGATION

SEC. 106. (a) In addition to the obligations referred to in section 104, the Secretary shall—

(1) within three years after the date upon which the conditions of section 107 of this title have been met, formulate and commence a fish enhancement program to—

(A) provide such measures as are necessary to bring the Lahontan cutthroat trout and cui-ui of Pyramid Lake to the point at which they are no longer classified as "endangered" or "threatened" pursuant to the Endangered Species Act (16 U.S.C. 1531, et seq.); and

(B) restore to the maximum extent practicable natural spawning of the Lahontan cutthroat trout and cui-ui in the Lower Truckee River; and

(2) continue to operate and maintain—

(A) the Lahontan National Fish Hatchery or any appropriate replacement fish hatchery facilities;

(B) fish hatchery facilities and improvements thereto situated on the Pyramid Lake Indian Reservation, the construction of which was or is federally supported; and

(C) the fishway and fish facilities at Marble Bluff Dam.

(b) The fish enhancement program provided in subsection (a)(1) shall consist of one or more of the following programs and shall be designed to enhance the Pyramid Lake fish resources in the most cost-effective manner:

(1) a program designed to facilitate and maintain physical restoration of the Lower Truckee River;

(2) modification and replacement of the fishway and fish facilities at Marble Bluff Dam;

(3) construction of additional fish hatcheries and improvements to existing hatcheries on the Pyramid Lake Reservation;

(4) within the Pyramid Lake Indian Reservation, such other programs as may be agreed upon by the Tribe and the Secretary; and

(5) outside the Pyramid Lake Indian Reservation, such other programs as may be agreed upon by the Secretary, the Tribe, the State of Nevada, and other affected parties.

(c) Nothing in this title shall be a limitation on spending authority under the Act of November 2, 1921 (25 U.S.C. 13) or any other Act of Congress.

(d) For the purposes of section 106(a)(2)(B), a hatchery is federally supported if moneys appropriated by Congress were or are used to pay, in whole or in part, for its construction.

(e) The Secretary shall, upon agreement with the Tribe, undertake biological studies to determine the flow requirements in the Lower Truckee River for the Pyramid Lake fish resources.

EFFECTIVE DATES

SEC. 107. (a) The provisions of sections 104, 105, 106, 110, and 111 of this title and title II of this Act shall not take effect until—

(1) Sierra Pacific Power Company and Washoe County, Nevada, have executed an agreement with the United States and the Tribe providing for the withdrawal, modification, or other appropriate disposition of application Nos. 47047, 47121, 47209, and 47264 pending before the State Engineer of Nevada for permits to appropriate waters of the Truckee River;

(2) the State Engineer of Nevada approves, subject to the provisions of the agreement referred to in subsection (a)(1), the application of the Tribe, Nos. 48061, and 48494, for permits to appropriate waters of the Truckee River;

(3) the State of Nevada agrees to contribute the amount referred to in section 108(b)(1);

(4) *Pyramid Lake Paiute Tribe* v. *California*, Civ. S–81–378–RAR, United States District Court, Eastern District of California, is dismissed with prejudice;

(5) *United States* v. *Truckee-Carson Irrigation District*, 2987–RCB, United States District Court,

District of Nevada, including those matters asserted in the Tribe's proposed amended complaint, is dismissed with prejudice;

(6) the Tribe's appeal in *United States* v. *Orr Water Ditch Co.*, No. 85-1880, Ninth Circuit Court of Appeals, is dismissed with prejudice;

(7) the Tribe's and the Secretary's appeals from the State Engineer's ruling in *United States* v. *Orr Water Ditch Co.*, Equity A 3-WEC, United States District Court, District of Nevada, and *United States* v. *Alpine Land & Reservoir Co.*, D-183-BRT, in the United States District Court for the District of Nevada, granting the applications to transfer Newlands Project water rights to other Newlands Project lands are dismissed with prejudice;

(8) *Pyramid Lake Paiute Tribe of Indians* v. *Clark* No. R-85-197-BRT. United States District Court for the District of Nevada, is dismissed with prejudice;

(9) *Truckee-Carson Irrigation District* v. *United States*, No. 512-7 (Ct. Cl.), is dismissed with prejudice;

(10) the operating criteria has been agreed upon, adopted and approved as provided in section 111; and

(11) Sierra Pacific Power Company, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe, and the Secretary have executed an agreement (and, if necessary, ratified such agreement by a court having competent jurisdiction) providing for utilization of available reservoir storage to best effectuate the Secretary's obligations under section 106(a)(1) and under sections 105 (b), (c), (d), and (e); and

(12) all pending motions filed by the Tribe in Doc. No. E-9530 before the Federal Energy Regulation Commission, have been withdrawn.

(b)(1) Subject to the provisions of paragraph (2) and except as provided in subsections (g) and (h) of section 108 and section 109(e), all the conditions of section 107(a) shall be accomplished within one year from the date of the enactment of this title or this Act shall terminate and shall be of no further force or effect.

(2) Upon the agreement of the Secretary and the Director of the Nevada Department of Conservation and Natural Resources the time limit provided in paragraph (1) may be extended for a period not to exceed six months.

SETTLEMENT FUND

SEC. 108. (a) There is hereby established in the Treasury of the United States a fund, to be known as the "Pyramid Lake Settlement Fund", to be used to carry out the purposes provided in this title.

(b) The settlement fund shall consist of—

(1) $8,000,000 to be contributed by the State of Nevada;

(2) amounts to be appropriated to the settlement fund; and

(3) interest accruing to the settlement fund pursuant to subsection (e).

(c) There is hereby authorized to be appropriated to the settlement fund the sum of $21,000,000. Funds appropriated pursuant to this section shall remain available until expended.

(d) The source of any moneys expended from the settlement fund shall be deemed to be one-half from the amount contributed to the settlement fund by the State of Nevada and one-half from funds appropriated pursuant to subsection (c) until an aggregate of $16,000,000 shall have been expended. All moneys expended in excess of $16,000,000 shall be deemed to be Federal funds.

(e) Such portion of the settlement fund as the Secretary determines is not required to meet current withdrawals shall be invested by the Secretary of the Treasury at the request of the Secretary in public debt securities of the United States with maturities suitable to the needs of the settlement fund, as determined by the yields on outstanding marketable obligations of the United States of comparable maturities.

(f) In the event the Secretary fails to obligate the sum of $16,000,000 to implement the fish enhancement program required by section 106(a)(1) within five years after the date upon which the conditions of section 107 have been met, or within such additional period as may be agreed upon by the Secretary and the Tribe, the amount representing the difference between $16,000,000 and the amount obligated shall be forfeited to the Tribe together with the interest thereon and credited to the Tribal Trust Fund established by section 109 of this title.

(g) None of the moneys referred to in this section may be expended until the conditions of section 107 have been met. In the event these conditions are not met, the moneys referred to in subsection 108(b)(1) together with any interest earned thereon shall be returned to the State of Nevada and any moneys referred to in subsection (c) together with any interest thereon shall be deposited in the Treasury of the United States as miscellaneous receipts.

TRIBAL TRUST FUND

SEC. 109. (a) There is hereby authorized to be appropriated the sum of $10,000,000 to be deposited in the Treasury of the United States in a fund to be known as the "Pyramid Lake Paiute Tribe Trust Fund". Such sum shall be held in trust for the Tribe, invested in interest-bearing deposits and securities, including securities of the United States, and expended as specified in this section.

(b) There shall be added to the tribal trust fund any amounts credited to the tribal trust fund under section 108(f). Until such time as the Lahontan cutthroat trout and the cui-ui shall shall no longer be listed as having been designated as either a threatened species or an endangered species, any moneys credited to the tribal trust fund pursuant to section 108(f) and any income earned thereon shall be expended only for the purpose of enhancing the Pyramid Lake fish resources in accordance with a plan approved by the Secretary.

(c) Except as provided in subsection (b) with respect to the amounts credited to the tribal trust fund under section 108(f), principal and income from the tribal trust fund may be used for capital expenditures relating to the economic development of the reservation. Income from the tribal trust fund may be used for operating expenses associated with economic development of the Tribe or tribal administrative purposes.

(d) The amount referred to in section 109(a) shall bear interest from the date of the enactment of this Act.

(e) None of the moneys referred to in this section may be expended unless and until the conditions of section 107 have been met. In the event such conditions are not met, the moneys referred to in this section shall be deposited in the Treasury of the United States as miscellaneous receipts.

DAMAGES

SEC. 110. (a) Subject to the conditions provided in subsection (b), the Secretary shall, in the event the Secretary fails to meet the obligations in section 104, pay damages to the governing body of the Tribe in an amount equal to the replacement cost of such quantities of water as are necessary to meet those obligations or such lesser amount as may be agreed to by the Tribe.

(b)(1) The United States shall have no right to recover any portion of such damages from any person or entity, and the provisions of this section shall constitute the exclusive remedy of the Tribe for the failure to maintain the Lake levels as provided in section 104.

(2) The damages provided for in this section shall not exceed in any one year the sum of $5,000,000 for damages for the failure to meet the requirements of section 104(a) and the sum of $2,000,000 for damages for the failure to meet the requirements of section 104(b) or such lesser amount as may be agreed to by the governing body of the Tribe.

THE NEWLANDS RECLAMATION PROJECT

SEC. 111. (a) Notwithstanding any other provision of law, all repayment obligations for irrigation construction costs owing to the United States or one of its agencies by the Truckee-Carson Irrigation District shall be canceled by the Secretary and the Secretary shall at the request of the District issue a certificate acknowledging that the lands in the

District are free of the acreage and ownership and full cost pricing provisions of Federal Reclamation law provided that Truckee-Carson Irrigation District shall have the right to collect all unpaid construction costs. Such certificate shall be in a form suitable for entry in the land records of Churchill County and Lyon County, Nevada.

(b)(1) Truckee-Carson Irrigation District shall be responsible for the operation and control of the Newlands Project lands, works and rights subject to such reasonable rules and regulations as to repairs and maintenance of project facilities as the Secretary may adopt.

(2) Project operating criteria shall be agreed upon and adopted by the Secretary and Truckee-Carson Irrigation District, and approved by the Tribe and the State of Nevada. Project operating criteria shall be consistent with the provisions of the final decrees that have been entered in *United States of America* v. *Orr Water Ditch Co.*, and *United States* v. *Alpine Land & Reservoir Co.*, Nos. Equity A-3 and D-183 BRT in the United States District Court for the District of Nevada, and Nevada law.

COMPLIANCE WITH BUDGET ACT

SEC. 112. No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriation Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985.

OTHER STATUTES AFFECTED

SEC. 113. (a) All actions taken by the Secretary pursuant to sections 104, 105, 106, 107, and 111 of this title shall be exempt from the requirements of the National Environmental Policy Act (42 U.S.C. 4321, et, seq.).

(b)(1) Subject to the provisions of paragraph (2), actions under sections 104, 105, 106, 107, and 111 shall be recognized and deemed to be in full compliance with the Endangered Species Act (165 U.S.C. 1531, et, seq.) with respect to the Pyramid Lake fish resources and may be taken without regard to the requirements of the Act.

(2) Nothing in this subsection shall be deemed to prevent the Secretary from, in his discretion, seeking further appropriations for the purpose of constructing or modifying facilities or structures to enhance the Pyramid Lake fish resources.

APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

SEC. 114. The obligations of the Secretary to implement the fish enhancement program on the Pyramid Lake Reservation pursuant to section 106 shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450).

TITLE II—CONSENT AND APPROVAL OF CONGRESS TO THE CALIFORNIA-NEVADA INTERSTATE COMPACT

CONGRESSIONAL CONSENT

SEC. 201. The consent and approval of Congress is given to the Congressional Consent California-Nevada Interstate Compact between the States of California and Nevada. Such compact reads as follows:

"CALIFORNIA-NEVADA INTERSTATE COMPACT

"ARTICLE I. PURPOSES

"Consistent with the provisions of the authorization acts of the State of California and the State of Nevada and the United States, the major purposes of this compact are to provide for the equitable apportionment of water between the two States; to promote interstate comity and to further intergovernmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly integrated and comprehensive development, use, conservation, and control of the water within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins.

"ARTICLE II. DEFINITIONS

"A. The terms 'California' and 'Nevada' shall mean respectively the State of California and the State of Nevada.

"B. The term 'commission' shall mean the administrative agency created by Article IV of this compact.

"C. The term 'Lake Tahoe Basin' shall mean the drainage area naturally tributary to Lake Tahoe including said lake or to the Truckee River upstream from the Truckee River intersection with the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian.

"D. The term 'Truckee River Basin' shall mean the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake including such lake, but excluding the Lake Tahoe Basin.

"E. The term 'Carson River Basin' shall mean the area which naturally drains into the Carson River and its tributaries and to the Carson River Sink, but excluding the Humboldt River drainage area.

"F. The term 'Walker River Basin' shall mean the area which naturally drains into the Walker River and/or Walker Lake upstream from the intersection of the river and/or lake in Mineral County, Nevada, with the northern township line of Tier 10 North, Mount Diablo Base Line.

"G. Except as otherwise expressly provided in this compact the term 'existing', 'present', and 'presently' shall mean as of 1964.

"H. The term 'effective date of the compact' shall be the date on which the legislation provided for in Article XXII (1) and (2) shall become law.

"I. 'Measured' means the determination of the relevant amount of water in cubic feet per second or gallons per minute or acre-feet by the use of a current meter, rated weir, rated flume, pipeline water meter, computation from contour maps, or any other method which results in a reasonably accurate determination based on sound engineering practices.

"ARTICLE III. SOVEREIGN RELATIONSHIP

"A. Each state shall have jurisdiction to determine pursuant to its own laws, the rights to the use of waters allocated to it herein; provided, however, that the right to use such water shall be limited to such quantities of water as shall reasonably be required for the beneficial use to be served and shall not extend to the waste or unreasonable use of water. Such provision shall not be construed to affect the water rights laws of either state with respect to any waters, other than the waters allocated to the state hereunder. Each state will recognize and accept applications for such permits, licenses or other permissions as are required by the law of the state where the application is filed to enable the other state to utilize water allocated to such other state. This provision shall neither require nor prohibit the United States of America from complying with provisions of state law relating to the appropriation of water allocated to the states by this compact.

"B. Each state shall cooperate with the other in securing to each the right to fully utilize the rights and privileges granted and waters allocated to each hereunder.

"C. The use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made.

"ARTICLE IV. THE CALIFORNIA-NEVADA COMPACT COMMISSION

"A. Creation and Composition

"1. There is hereby created an interstate compact commission to be designated as the California-Nevada Compact Commission herein referred to as the commission.

"2. The commission shall consist of five members from each state and one member as representative of the United States chosen by the President of the United States who is hereby requested to appoint such a representative. The United States member shall be ex officio chairman of the commission without vote and shall not be a domiciliary of or reside in either state.

"(a) The California members of the commission shall consist of the Director of the Department of Water Resources of the State of California, and four (4) members appointed by the Governor of California, all of whom shall be residents of the State of California. One of the four members so appointed shall be a resident of the Lake Tahoe Basin, one shall be a resident of the Truckee River Basin, one shall be a resident of the Walker River Basin and one shall be a resident of the Carson River Basin.

"(b) The Nevada members of the commission shall consist of the State Engineer of the State of Nevada (who additionally shall represent all Nevada areas not otherwise represented as herein provided), and four (4) members appointed by the Governor of Nevada, each of whom shall be a resident of the State of Nevada and represent a specific area therein as below defined, provided that the Governor shall not appoint any person a member of such commission if he determines that such person has a conflicting interest in California. One of the four members so appointed shall be a resident real property owner within and represent the Reno-Sparks metropolitan area (including adjacent agricultural area) and be fully qualified by knowledge and experience in connection with the water requirements and supply for such area; the other three members so appointed shall be representative of the common interest and goals of all water users of the area and each shall have broad practical experience in water management, and one shall be a resident real property owner within and represent the Walker River Basin in Nevada, another shall be a resident real property owner within and represent the Carson River Basin in Nevada upstream from Lahontan Reservoir, and the third shall be a resident real property owner within and represent the area within the Truckee-Carson Irrigation District in Nevada.

"3. The term of office of the four members of the commission appointed by each Governor shall be four (4) years. The Governor of each state, upon appointment of the first members of the commission, shall designate one member of the commission to serve for a period of one year, one member to serve for a period of two years, one member to serve for a period of three years, and one member to serve for a period of four years. Thereafter, members shall be appointed for the regular term of four years as the terms expire.

"4. Interim vacancy, for whatever cause, in the office of any member of the commission shall be filled for the unexpired term in the same manner as hereinabove provided for regular appointment.

"5. The appointed members of the California-Nevada Compact Commission shall be designated within ninety (90) days after the effective date of the compact. Within thirty (30) days after such members have been appointed and the federal representative designated, the commission shall meet and organize.

"B. Finances

"1. The salaries and the personal expenses of each member of the commission shall be paid by the government he represents. All other expenses which are incurred by the commission incident to the administration of this compact and which are not paid by the United States or by other funds received by the commission shall be borne equally by the two states.

"2. The commission shall adopt a budget covering the commission's estimate of its expenses for each of the following two fiscal years; provided, that whenever the Legislatures of both states appropriate funds on an annual basis the commission shall submit its budget on such annual basis. The commission shall submit said budget to the Governors of the two states for joint review and approval and to the President of the United States at the earliest date prescribed by the two states for submission of proposed budgets. Each state shall appropriate one-half of the funds necessary to meet said budget requirements, which appropriations shall be made available to the commission as of July 1 of each fiscal year for such fiscal year's operations. All unexpended and unencumbered funds from such appropriations shall be returned by the commission in equal proportions to the states to the credit of the state fund from which said appropriations was made. All receipts and disbursements of funds handled by the commission shall be subject to a joint audit by the states and the report of said audit shall be included, and become a part of the annual report of the commission.

"3. The commission shall not pledge the credit of any government except by and with the authority of the legislative body thereof given pursuant to and in keeping with the Constitution of said government. The commission shall not incur any obligations prior to the availability of funds adequate to meet the same.

"4. The commission shall make and transmit to the Legislature and Governor of each state and to the President of the United States an annual report covering the finances and activities of the commission and embodying such plans, recommendations and findings as may have been adopted by the commission.

"C. Meetings and Voting

"1. A quorum for any meeting of the commission shall consist of six members of the commission, provided that at least three members are present from each state.

"2. All meetings of the commission for the consideration of and action on any matters coming before the commission, except matters involving the management of internal affairs of the commission and its staff, or involving litigation in which the commission is a party, shall be open to the public. Matters coming within the exception of this paragraph may be considered and acted upon by the commission in executive session under such rules and regulations as the commission may see fit to establish.

"3. Each state shall have but one vote and every decision, authorization, determination, order or other action shall require the concurring votes of both states, provided that no state shall vote on any action without the concurring vote of not less than three members of the commission from such state.

"D. General Powers

"The commission shall have power to:

"1. Adopt, amend and revoke bylaws, rules and regulations and prescribe procedures for administration of the provisions of this compact.

"2. Establish such offices as it deems necessary, and acquire and hold property either by purchase, lease or otherwise as may be necessary for the performance of its functions under this compact.

"3. Employ engineering, legal, clerical and other aid as in its judgment may be necessary for the performance of its functions. Such employees shall be paid by and be responsible to the commission and shall not be considered to be employees of either state. The commission may establish workmen's compensation benefits directly or by insurance. The commission is authorized to contribute to the cost of health and accident insurance for its employees to the same extent as either state contributes to the cost of such insurance for its employees.

"4. Perform all functions required of it by this compact and to do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state, federal or local agency or other entity or person.

"5. Make such findings as are pertinent to this compact including but not limited to findings as to the quantities of water being used in either state, the amount of water available for use pursuant to the allocations made herein, and each state's share of the waters allocated.

"6. Install and maintain measuring devices of a type or types approved by the commission in any stream, lake, reservoir, ditch, pumping station or other diversion works on the Truckee, Carson or Walker Rivers or on Lake Tahoe, or on waters tributary thereto, or to require water users at their expense to install and maintain measuring devices, as the commission may determine necessary or proper to carry out the purposes or provisions of this compact. The execution and enforcement of such requirements concerning such measuring devices as shall be enacted by the commission shall be accomplished by the commission directly, or by such federal, state, local or other official or person as the commission may delegate, or by any other agency responsible to or representing a federal court.

"7. Accept gifts of money or real property or anything of value.

"8. Appoint a hearing examiner or examiners who may be members of the commission to conduct hearings and to make recommendations to the commission on any matter requiring a hearing and decision by the commission.

"9. Obtain a right of access to all properties in the Lake Tahoe, Truckee River, Carson River and Walker River Basins whenever necessary for the purpose of administration of this compact. The commission may obtain a court order to enforce this right of access.

"10. Take such action as it deems appropriate for the enforcement of the provisions of this compact.

"11. Administer oaths or affirmations and to compel the attendance of witnesses and the production of documents by the use of subpoena which may be served anywhere within the territorial limits of the United States; said power to administer oaths and affirmations and to compel the attendance of witnesses and the production of documents by the use of subpoena may also be exercised by any hearing examiner appointed as provided in subsection 8 of this Section D.

“12. Contact with the appropriate agency of either state, including the retirement system, to provide retirement and other benefits to commission employees.

“E. Whenever the public health or welfare is endangered, the commission may declare the existence of an emergency and, in such event, shall designate the location, nature, cause, area, extent and duration thereof. In the event of an emergency so declared, the commission may, with respect to all matters covered by this compact, do all things necessary, proper or convenient independently or in cooperation with any other agency, person, or entity, to initiate, carry on, and complete any and all remedial measures required to meet said emergency including the adoption and enforcement of any regulations and restrictions necessary for ~~such~~ purpose.

“ARTICLE V. LAKE TAHOE BASIN

“A. The right of the United States or its agent to store waters in Lake Tahoe between elevations 6,223.0 and 6,229.1 feet (Lake Tahoe datum) and to release said stored waters for beneficial uses downstream from Lake Tahoe Basin is hereby ratified and confirmed subject to the rights granted in Section D of this article.

“B. It is agreed by the states subject to the consent of the head of the federal agency having jurisdiction thereof, that an overflow weir of approximately 140 feet in length with a crest elevation of 6,223.0 feet, Lake Tahoe datum, upstream from the Lake Tahoe outlet gates shall be constructed and installed with necessary channel improvements within four years from the effective date of this compact provided that should the commission decide that it is in the best interest of each of the two states, it may extend such period for such additional period or periods as it may deem reasonable. The cost of this installation shall be borne by the States of California and Nevada in equal amounts. As used herein, Lake Tahoe datum shall be measured with respect to the top surface of the hexagonal brass bolt seven-eighths inch in diameter, projecting one inch from the vertical face of the southerly concrete abutment wall of the present existing Lake Tahoe Dam, at approximately 3.2 feet below the top of the wall and approximately in line with the upstream ends of the cutwaters of the concrete piers between the sluiceways of the dam. This surface of the brass bolt is presumed for the purposes of the compact to have an elevation 6,230.0 feet Lake Tahoe datum, notwithstanding that it was determined by the U.S. Geological Survey on November 15, 1960, to be at an elevation of 6,228.86 feet above sea level datum of 1929.

"C. The storage rights in Lake Tahoe shall be operated alone or in conjuntion with other reservoirs so as to minimize the period and duration of high and low water elevations in Lake Tahoe, provided that exchanges of water or releases between Lake Tahoe and other reservoirs shall not measurably impair the intended purpose of such reservoirs.

"D. Upon construction of the overflow weir provided for in Section B of this article, the total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in said basin shall not exceed 34,000 acre-feet annually, of which 23,000 acre-feet annually is allocated to the State of California for use within said basin, and 11,000 acre-feet annually is allocated to the State of Nevada for use within said basin. After use of the water allocated herein, neither export of the water from the Lake Tahoe Basin nor the reuse thereof prior to its return to the lake is prohibited. This allocation is conditioned upon the construction of the overflow weir; however, it is recognized that there may well be a period of time between the effective date of the compact and the construction of the overflow weir; during that period of time both states shall be permitted to use waters within the Lake Tahoe Basin subject to the same conditions, both as to place of use and amounts of use, as are provided in this Article V.

"E. In addition to the other allocations made by this compact, transbasin diversions from the Lake Tahoe Basin in both states existing as of December 31, 1959, may be continued, to the extent that such diversions are recognized as vested rights under the laws of the state where each such diversion is made.

"The diversion of a maximum of 3,000 acre-feet per annum from Marlette Lake for use in Nevada is hereby recognized as an existing transbasin diversion within the meaning of this Section E.

"F. Pumping from Lake Tahoe Basin for the benefit of downstream users within the Truckee River Basin shall be permitted only in the event of a drouth emergency as declared by the commission to the extent required for domestic, municipal, and sanitary purposes, and when it is determined by the commission that all other water available for such uses from all sources is being so utilized. In the event of such declaration of emergency, use of this water for such purposes shall have priority over use of water for any other purpose downstream from Lake Tahoe Basin. Pumping shall be done under the control and supervision of the commission and water pumped shall not be charged to the allocation of water to the Lake Tahoe Basin made herein.

"ARTICLE VI. TRUCKEE RIVER BASIN—

"The following allocations of water of the Truckee River and its tributaries, including Lake Tahoe releases, are hereby made in the following order of relative priority as between the states:

"A. There is allocated to Nevada water for use on the Pyramid Lake Indian Reservation in amounts as provided in the 1944 Truckee River Decree (Final Decree in United States vs. Orr Ditch Company, et al., United States District Court for the District of Nevada, Equity No. A3). By appropriate court order, the United States, for and in behalf of the Pyramid Lake Indians shall have the right to change points of diversion, place, means, manner, or purpose of use of the ~~water~~ so allocated so far as such change may be made without ~~injury to the allocations~~ to either state.

"B. There is allocated to California:

"1. The right to divert within the Truckee River Basin in California 10,000 acre-feet of water per calendar year which may be stored in reservoirs at times when the flow in the channel of the Truckee River at the United States Geological Survey Gauging Station at or near the California-Nevada state line exceeds 500 cubic feet per second; provided that such diversions shall not in the aggregate exceed 2,500 acre-feet in any calendar month and the amount of such storage in any one reservoir, except Donner Lake, shall not exceed 500 acre-feet of active storage capacity.

"2. The amount of water as decreed to the Sierra Valley Water Company by judgment in the case of United States vs. Sierra Valley ~~Water Company~~, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

"3. Six thousand acre-feet of water annually from the conservation yield of Stampede Reservoir having a storage capacity of 225,000 acre-feet, subject to the execution of a contract or contracts therefor with the United States of America. California may divert all or any portion of said 6,000 acre-feet of conservation yield from Stampede Reservoir directly or by exchanges from any source on the Truckee River or its tributaries or from Lake Tahoe. California shall be allowed to deplete this allocation; provided, that in ascertaining the amount of depletion, credit for return flow shall be limited to the amounts of water which can be measured as a contribution to the Truckee River system.

"4. If and when the water allocated to California in subparagraphs 1 and 3 of this section and in Article V is being used, or such use appears imminent, the commission shall permit California to develop additional yields of water for use in California, either directly or by exchange subject to the following limitations:

"(a) All existing beneficial uses of water for domestic, municipal, industrial, and agricultural purposes in Nevada as determined by Nevada law as of that time together with the yield of Stampede Reservoir in excess of 6,000 acre-feet shall be recognized and not impaired by the development of such additional yield.

"(b) Additional yields developed for use in California shall be limited to an amount not to exceed an aggregate of 10,000 acre-feet annually, and such development shall be for domestic, municipal, and industrial uses solely. California shall be allowed to deplete this allocation; provided, that in ascertaining the amount of depletion, credit for return flow shall be limited to the amounts of water which can be measured as a contribution to the Truckee River system.

"(c) The right of the commission to permit Nevada to share in such additional yield upon participation by Nevada in bearing a proportionate cost of developing such additional yield.

"C. The right to store in Prosser Creek Reservoir a maximum of 30,000 acre-feet of water annually with the priority as set forth in California State Water Rights permit 11666 and to release water therefrom as set forth in said permit and any license which may be issued thereunder is hereby recognized and confirmed.

"D. There is allocated to Nevada all water in excess of the allocations made in Sections B and C of this article.

"ARTICLE VII. CARSON RIVER BASIN

"The following allocations of water of the Carson River and tributaries are hereby made in the following order of priority as between states:

"A. There is allocated to the State of California:

"1. The right to divert from the natural flow of the West Fork Carson River and its tributaries for existing non-irrigation uses, and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands determined to be approximately 5,600 acres, an aggregate flow of water equal to a 30-day average of 3 c.f.s. per 100 acres or 168 c.f.s. for the area as a whole; provided that the 3 c.f.s. per 100-acre limitation shall not prevent greater rates of diversion for those areas which have an established greater rate of use; provided further, however, that the maximum aggregate diversion shall not exceed 185 c.f.s. measured at the points of diversion.

"Provided, however, diversions for use downstream from the western boundary of Section 34, Township 11 North, Range 19 East, Mount Diablo Base and Meridian, shall be subject to the following limitations:

"(a) Whenever, after the first Monday in May or any day in that week or alternate weeks thereafter of any year the flow of the West Fork of the Carson River at said western boundary shall have fallen below 175 cubic feet per second, then, until October 31 next, water users in California who divert from the West Fork of the Carson River downstream from said western boundary shall rotate all or any portion of the natural flow of the West Fork of the Carson River necessary to satisfy the demand of Nevada lands with water users in Nevada every other week beginning with the week following that in which water is used in Nevada, and during each rotation period said California users shall be entitled to divert the natural flow of the West Fork of the Carson River during their rotation weeks.

"(b) Rotation between water users in California and Nevada on the West Fork of the Carson River may be terminated in whole or in part upon approval of the commission for such termination, upon provision being made so that sufficient water is available by storage or exchange to assure that the water users in Nevada will receive at the same time the flow of water which would have been available to the Nevada water users under rotation.

"(c) Stock water, domestic water, and water for fire protection purposes may be diverted downstream from said western boundary from the natural flow of the West Fork of the Carson River at all times by owners of irrigation water rights in California whose lands are contiguous to the West Fork of the Carson River; provided, however, that such diversion shall be limited to the amounts actually required to deliver water for such purposes, and any excess over the amount so diverted shall be returned to the West Fork of the Carson River whenever practicable. Water diverted under this provision shall not be converted to any other use. The commission or its designee shall rule on any challenge relative to the necessity and amount of water required for such purposes.

"2. The right to divert from the natural flow of the East Fork Carson River and its tributaries for existing nonirrigation uses, and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands determined to be approximately 3,280 acres, an aggregate flow of water equal to a 30-day average of 3 c.f.s. per 100 acres or 115 c.f.s. for the area as a whole; provided that the 3 c.f.s. per 100-acre limitation shall not prevent greater rates of diversion for those areas which have an established greater rate of use; provided further, however, that the maximum aggregate diversion shall not exceed 115 c.f.s. measured at the points of diversion.

"3. There is allocated to the State of California the right to store 2,000 acre-feet of water per annum within Alpine County for supplemental use on presently irrigated lands within said county adverse to Lahontan Reservoir but subject to all other existing uses in Nevada. Water stored pursuant to this section remaining at the end of the year shall be deemed to have been stored in the succeeding year.

"B. There is allocated to the State of Nevada;

"1. The right to divert water from the natural flow of the Carson River and its tributaries during the period commencing March 15 and ending October 31 of each year at the rate of 3 c.f.s. per 100 acres for use on presently irrigated lands in the area above Lahontan Reservoir determined to be approximately 41,320 acres. The rate of 3 c.f.s. per 100 acres is based on a 30-day average for the area as a whole and shall not prevent greater rates of diversion for those areas that have an established greater use; provided that the aggregate diversion measured at the points of diversion shall not exceed 700 c.f.s. on the East Fork of the Carson River, 300 c.f.s. on the West Fork of the Carson River, and 220 c.f.s. on the Main Carson River below the confluence of the East and West Forks.

"The combining and exchanging of the use of water between ditches and among users shall be permitted at all times and shall be required whenever necessary in order to obtain reasonable economy in the use of the water of the river or other streams, or in order to give to each ditch or user a more advantageous irrigation head.

"2. Subject to allocations made in subsection B.1 and Section C of this article, the right to divert water from the

Carson River for irrigation use either by direct diversion or by storage in Lahontan Reservoir or other existing reservoirs for use on the Newlands Project.

"C. There is allocated to each state the right to store water in existing reservoirs upstream from Lahontan Reservoir to the extent of existing capacity with the appropriate priority with respect to natural flow rights upstream from Lahontan Reservoir under applicable state law, and use such stored waters on the lands in each state to which the storage is appurtenant.

"D. Additional yields shall be available for development under the currently authorized Washoe Project from water available in excess of existing beneficial uses recognized by Nevada law, or under other new projects upon a determination by the commission that there is water available on the Carson River and its tributaries in excess of that required to satisfy existing beneficial uses in Nevada as determined by Nevada law as of the time of authorization of construction of such new projects. Such additional yields shall be allocated between the states with equal priority, 20 percent of which shall be allocated to California and 80 percent to Nevada.

"Each state shall have the right to participate in any development project by bearing a proportionate cost of such development. In the event that joint developments are found to be not feasible or desirable, each state may develop separately its proportionate share of the remaining water.

"E. Except as provided by Article X of this compact, the waters of the Carson River shall not be used in areas outside the Carson River Basin.

"ARTICLE VIII. WALKER RIVER BASIN

"A. Allocations to Present Rights and Uses

"1. Except as the rights of the Walker River Irrigation District may be limited by subsections 2 and 3 below, the provisions of the decree in the case of United States v. Walker River Irrigation District, et al., United States District Court for the District of Nevada Equity No. C-125, filed April 15, 1936, as amended by the Order of the Honorable A. F. St. Sure, dated April 24, 1940, hereafter called Decree C-125 are hereby recognized and confirmed.

"2. The rights of the Walker River Irrigation District to store water of the West Walker River in Topaz Reservoir with a storage capacity of 59,000 acre-feet, under Part VIII of Decree C-125 and under any other basis of right, and to use such water, are hereby recognized and confirmed, subject to the following:

"(a) The maximum quantity of water which can be diverted annually to storage is 85,000 acre-feet. No more than 85,000 acre-feet of water less reservoir evaporation can be rediverted for use within the district annually. The 85,000 acre-feet amount so allowed to be diverted to storage and rediverted to use include water used under direct diversion rights in Decree C-125 acquired by said district prior to 1964. For the purpose of this provision 'annually' means the period from November 1 through October 31 of the following year.

"(b) The maximum rate of diversion to such reservoir under such rights is 1,000 c.f.s.

"(c) For the purpose of determining the availability of water to satisfy rights junior to the Topaz Reservoir storage rights of the Walker River Irrigation District, or for division between the states as unused water, water which has been stored, or is available for storage in and can be physically diverted to such reservoir under such reservoir rights but is released or is allowed to pass through the reservoir and is not rediverted to use in Nevada, shall be deemed to have been held in storage; provided, that until a new major storage project is constructed on the West Walker River, the foregoing shall not apply to the extent that said district with the concurrence of the watermaster determines, prior to the release or passing through of such water from Topaz Reservoir in any year, that it is necessary to release or pass through such water in order to provide storage space in Topaz Reservoir as a means of protecting lands in Nevada against flood damage later in the year.

"3. The right of the Walker River Irrigation District to store water of the East Walker River in Bridgeport Reservoir with a storage capacity of 42,000 acre-feet, under Part VIII of Decree C–125 and under any other basis of right, and to use such water, are hereby recognized and confirmed, subject to the following:

"(a) The maximum quantity of water which can be diverted to storage in any year is 57,000 acre-feet. No more than 57,000 acre-feet of water less reservoir evaporation can be rediverted for use within the district in any year. The 57,000 acre-feet amounts so allowed to be diverted to storage and rediverted to use include water used under direct diversion rights in said decree acquired by said district prior to 1964 except for water used under such rights prior to 1964 on lands owned by said district in Bridgeport Valley. For the purpose of this provision 'year' means the period from November 1 of one calendar year to October 31 of the following calendar year.

"(b) Water of the East Walker River and its tributaries may, adversely to the Bridgeport Reservoir storage rights hereinabove recognized and confirmed, be stored upstream from said reservoir in any year, for later use after the spring flood of the year in which the water was so stored, under rights junior to said reservoir rights; provided, that when the Walker River system is put on priority under Decree C–125 after the annual spring flood, or upon demand made prior to the spring flood for water necessary to satisfy early season demand, the watermaster shall make an accounting and water shall be released from said upstream storage in such amounts as determined by the watermaster to be necessary to satisfy said reservoir rights to the same extent as they would have been satisfied in the absence of said adverse upstream storage.

"4. (a) There is allocated to each state respectively the amount of existing diversions and uses of water of the Walker River Basin diverted upstream from Weber Reservoir and not specifically covered in Decree C–125, provided, that this allocation shall not include water distributed under the historical administration of Decree C–125 in excess of the rights set forth in Decree C–125 to lands having rights thereunder. In making this allocation, it is recognized that the amounts of water allocated and the respective priorities are not presently known with certainty. The commission shall as soon as practicable after its effectuation provide for an investigation, either with its own staff or by other agencies or persons, to ascertain with certainty the amounts of water and priorities of such uses. As between the respective states, the priorities shall be determined as follows: In cases of use not under state-recognized rights, the priorities shall be the date of initiation of use; in cases of use under state-recognized rights, the priorities shall be as provided under the law of the state where the diversion is made. Upon approval by the commission, the results of the investigation shall be binding as to the allocation to each state hereunder.

"(b) In addition to rights recognized in subsection A.1 of this article there is allocated to Nevada for use on the Walker River Indian Reservation a maximum of 13,000 acre-feet per year for storage in Weber Reservoir and later rediversion to use and in addition 9,450 acre-feet per year to be diverted from natural flow. Both allocations shall have a priority of 1933. The season for diversion of water storage shall be from November 1 to October 31 of the following year. The season for diversion of water directly for use shall be from March 1 to October 31 and at a maximum rate of 60 cubic feet per second. For the purpose of determining the availability of water to satisfy rights junior to this allocation or for division between the states as unused water, water which has been stored, or which can be physically stored or diverted to use under this allocation but is released or is allowed to pass through Weber Reservoir and is not rediverted to use on the Walker River Indian Reservation, shall be deemed to have been held in storage or used: *Provided,* That the foregoing shall not apply to the extent that the appropriate representative of said reservation with the concurrence of the watermaster determines prior to the release or passing through of such water from Weber Reservoir in any year, that it is necessary to release or pass through such water in order to provide storage space in Weber Reservoir as a means of protecting lands in Nevada against flood damage later in the year: *Provided further,* That the foregoing shall not apply to passage of water of inferior quality to the extent that such passage may be necessary to maintain the water of suitable quality for irrigation on said reservation as determined by the commission.

"Water of the Walker River and its tributaries may, adversely to the Weber Reservoir storage rights hereinabove recognized and confirmed, be stored upstream for said reservoir in any year, for later use after the spring flood of the year in which the water was so stored, under rights junior to said reservoir rights: *Provided,* That when the Walker River system is put on priority under Decree C–125 after the annual spring flood, or upon demand made prior to the spring flood for water necessary to satisfy early season demand, the watermaster shall make an accounting and water shall be released from said upstream storage in such amounts as determined by the watermaster to be necessary to satisfy said reservoir rights to the same extent as they would have been satisfied in the absence of said adverse upstream storage.

"5. In addition to rights recognized in subsections A.1 and A.4(a) above, there is allocated to California water of the West Walker River as follows:

"(a) When all direct diversion rights under Decree C-125 are being satisfied and simultaneously water of the West Walker River is being diverted to storage pursuant to the Topaz Reservoir storage rights recognized and confirmed in subsection 2 of this Section A, but there is not flow in excess of that required to fully satisfy Topaz Reservoir storage rights, diversions in Antelope Valley in excess of the amounts to which Antelope Valley lands are entitled under Decree C-125 shall be permitted by the watermaster for such periods and in such amounts as, in the sound professional judgment of the watermaster, will not cause, on an overall irrigation season basis, any discernible net reduction in the amount of water available to satisfy Topaz Reservoir storage rights.

"(b) Such excess diversions may be used only on Antelope Valley lands entitled to water under Decree C-125 which can be served from the ditch systems existing as of the effective date of this compact.

"(c) The allocation in this subsection 5 shall terminate after construction of a new major storage project on the West Walker River upstream from Antelope Valley.

"B. Allocation of Unused Water

"1. The term 'unused water' includes all waters of the Walker River and its tributaries in excess of the amounts allocated, or required for satisfaction of rights and uses recognized and confirmed, as provided under Section A of this Article VIII, except that there shall be excluded therefrom natural flow which is not physically available above the head of Mason Valley. There is allocated to the State of California 35 percent of such unused water, and there is allocated to the State of Nevada 65 percent of such unused water. The allocation to each state provided herein in this subsection B.1 shall be equal in priority.

"(a) The reregulation by storage of waters allocated for storage shall not be considered as the development of 'unused water'.

"2. Neither state shall be precluded from constructing works for the control, use and development of the water allocated pursuant to subsection B.1 of this article for optimum use of water.

"3. While separate development may be undertaken by either state for surface storage of unused water of the West Walker River so allocated, the State Engineer of the State of Nevada and the Department of Water Resources of the State of California shall cooperate in a joint review of all potential developments of unused water of the West Walker River so allocated in subsection B.1 of this Article VIII and shall prepare and present a report of the benefits to be obtained, and other relevant data from each such development to the commission or if the commission has not yet become operative, to the joint commission which negotiated this compact, at a public hearing or hearings held at times and places within the Walker River Basin set by the commission or said joint commission.

"(a) Should a separate surface storage project or projects be constructed in Nevada to develop Nevada's share of the unused water of the West Walker River, California may thereafter store and use said unused water allocated to Nevada adverse to such Nevada storage projects: *Provided,* That, without charge to Nevada, California makes available for consumptive use in Nevada, water in the same amounts, at the same times, and in the same places as would have been available for use in Nevada from such Nevada storage projects had California not so stored and used said unused water allocated to Nevada: *And provided further,* That Nevada shall not be deprived of water required for: (1) maintenance of a minimum reservoir level for the preservation of fish life and (2) nonconsumptive uses which are found by the commission to be in the public interest of the Walker River Basin as a whole.

"(b) From time to time after construction of each surface storage project upstream from Topaz Reservoir, for development of the unused water allocated herein, the commission shall determine the amounts of water which may be diverted and used in each state pursuant to its allocation as the result of the construction and operation of such project. In making such determination the commission shall compute any increase of yield of previously constructed reservoirs which may result from operation of such project constructed to develop unused water and shall include such increase in the amounts of water which may be diverted and used in each of the two states pursuant to its allocation of unused water.

"4. Return flow to the Walker River or its tributaries from any source shall be deemed to be natural flow.

"5. Unused water shall be used only:

"(a) Within the Walker River Basin;

"(b) Within the portion of Artesia Lake Basin south of the northern township line of Tier 12 North and west of a line one mile east of the eastern range line of Range 23 East, Mount Diablo Base Line and Meridian;

"(c) Within the portion of Mason Valley and Adrian Valley south of the northern township line of Tier 15 North, Mount Diablo Base Line;

"(d) Within the area tributary of Topaz Lake; or

"(e) Any combination of the above areas.

"C. Watermaster.

"1. A single watermaster shall have the responsibility and power to administer: (a) all rights and uses of water of the Walker River Basin recognized in Section A of this Article VIII, including rights under Decree C–125, (b) the allocation between the states provided for in this compact of water of the Walker River Basin in excess of that necessary to satisfy such rights and uses, and (c) all rights acquired to use water so allocated.

"2. The watermaster shall be nominated by the commission as soon as practicable after this compact goes into effect, but his appointment shall not become effective until approved and confirmed by the Federal District Court for the District of Nevada, it being the intent of this compact that only a person satisfactory to both the commission and said court be the watermaster under this compact and under Decree C–125. At any time either the commission or said court may terminate the appointment of the person serving as watermaster by adopting an appropriate resolution or order, and notifying the other and the watermaster thereof. When a vacancy occurs by such action or by the death or resignation of the person serving as watermaster, a successor shall be selected by the same procedures for the original appointment.

"3. Until appointment of the watermaster becomes effective by approval and confirmation of said court either as to the original selection of the watermaster or subsequent selections to fill a vacancy, a person designated by the commission shall have interim responsibility and power to administer the allocation between the states referred to in subsection (1)(b) above and all rights and uses other than the rights under Decree C–125, and the rights and uses under Decree C–125 shall be administered on an interim basis as may be provided by said court.

"4. Actions and decisions of the watermaster as to the administration of the rights under Decree C–125 shall be subject to review and modification by said court. Actions and decisions of the watermaster as to the administration of the allocation between the states referred to in subsection 1(b) above and of all rights and uses other than rights under Decree C–125 shall be subject to review and modification by the commission.

"5. Said court is requested to appoint a six-member advisory board composed of one person each representing: (1) the East Walker River Basin in California, (2) the West Walker River Basin in California, (3) the East Walker River Basin in Nevada, (4) the West Walker River Basin in Nevada, (5) the Main Walker River Basin in Nevada, and (6) the Walker River Indian Reservation. The watermaster shall prepare an annual budget of proposed expenditures for personnel, equipment, supplies, and other purposes deemed by him to be necessary to carry out his functions. In the formulation of said budget the watermaster shall consult with said advisory board. In the event that said advisory board is not in agreement with the budget proposed by the watermaster, it shall so advise said court. Said budget shall require approval of both the commission and said court to become effective.

"6. The expenditures attributable to administration of the rights under Decree C–125 shall be apportioned and collected in accordance with orders of said court. The expenditures attributable to administration of all other rights and uses of the water of the Walker River Basin under this compact shall be equitably apportioned among, and collected from, the users thereof by the watermaster under rules and regulations of the commission, and the commission shall have the power to enforce collection thereof by any reasonable means, including court action in any state or federal court of appropriate jurisdiction. The expenditures attributable to administering the allocation between the states referred to in subsection 1(b) above shall be borne by the commission as part of the expense under Article IV, subsection B.1 of this compact.

"ARTICLE IX. GROUND WATER AND SPRINGS

"A. Development and Use of Ground Water

"1. Both states shall have the right to develop and use ground water within their respective boundaries; provided that development and use of ground water in one state shall not reduce the amount of water which the other state would have received under the allocation herein if ground water were not developed and used.

"2. In the development and use of ground water pursuant to this article, wells or other methods of collecting underground water shall be constructed in a manner which will assure that water will not be drawn directly from allocated surface water. In the absence of proof to the contrary made to the commission, wells drilled within 500 feet from any perennial streams which are not sealed from the surface to a depth of at least 50 feet shall be deemed prima facie to draw directly from allocated surface water.

"B. Each state shall have the right to use water from springs; provided that the use of water from springs in one state shall not reduce the amount of water which the other state would have received under the allocations herein if water from springs were not used.

"C. Effect on Allocations

"1. The commission shall have authority to take such action as it deems appropriate, so that the allocations of water made by this compact to either state shall not be adversely affected by ground water withdrawals or use of water from springs in the other state.

"2. If either state claims that the development and use of ground water or water from springs in the other state reduces the amount of water which said state would have received under its allocation if such ground water or water from springs were not developed and used, it may file a protest with the commission in accordance with the rules of the commission. The commission is empowered to receive evidence on any protest and make its ruling thereon.

"Article X. Interbasin Transfers of Use

"Either state may use directly, by exchange, or otherwise its allocated waters of the Truckee River in the Lake Tahoe Basin or the Carson River Basin, or its allocated waters of the Carson River in the Lake Tahoe Basin or the Truckee River Basin. The commission shall have authority to take such action as it deems appropriate so that the allocations of water made by this compact to either state shall not be adversely affected by such use in the other state.

"Nothing herein shall preclude the use of Lake Tahoe as a physical facility to accomplish the use of Truckee River waters in the Carson River watershed or Carson River waters in the Truckee River watershed, but in no event shall the use of Lake Tahoe as such a physical facility be inconsistent with any provision of Article V of the compact.

"Article XI. Suppression of Evaporation

"A. Either state is entitled, but not obligated to participate in any project for the conservation of water through the suppression of evaporation. The yield of any such project shall be allocated to each state by the commission in such proportion as shall be determined by the commission, taking into consideration such factors as the commission deems pertinent. Such allocation of yield to each state shall be in addition to the waters allocated to each state by other provisions of this compact.

"B. Subject to the power of the commission to allocate the increased yield resulting from suppression of evaporation as set forth above, no existing property right shall be adversely affected except by agreement with the owner, or as may be otherwise permitted by state law. Nothing herein shall diminish or supersede any law of either state regarding water quality, including but not limited to conditions affecting fish and wildlife.

"ARTICLE XII. COORDINATION OF RESERVOIRS

"A. The commission shall have the authority to prepare plans for the coordination of reservoirs and the method of implementation of any such plans prepared, and to approve the same and to review and revise such approved plans from time to time as the commission may deem appropriate. Prior to the preparation of any such plan and implementation or review or revision thereof, the owners of all reservoirs to be affected thereby shall be given the opportunity of participating in such preparation, review, or revision.

"B. Prior to the approval thereof, the commission shall provide for public hearings concerning such a plan, review, or revision upon such notice as the commission deems appropriate.

"C. Any owner of a reservoir shall have the right to refuse to participate in any such plan, or method of implementation, or review or revision thereof, and in such event such reservoir shall be excluded therefrom, and any plan or implementation or review or revision concerning other reservoirs as may be approved shall not adversely affect the use of the reservoir or the right to the use of water therefrom, which has been excluded.

"D. Owners of reservoirs may develop plans for coordination thereof, but shall give written notice to the commission at least 60 days prior to their implementation.

"ARTICLE XIII. FISH, WILDLIFE, AND RECREATION

"The use of waters for preservation, protection, and enhancement of fish, wildlife, and recreation is hereby recognized as an inseparable part of the public interest in the use of the waters of Lake Tahoe, Truckee, Carson and Walker River Basins in both states, and is, therefore, beneficial.

"ARTICLE XIV. NONCONSUMPTIVE USE

"Each state may use water for nonconsumptive purposes, including but not limited to flood control, recreation, fishery and wildlife maintenance and enhancement, and hydroelectric power generation, provided that such uses result in no discernible reduction in the water allocated to the other state.

"ARTICLE XV. DIVERSION AND EXCHANGE OF YIELD FROM FUTURE RESERVOIRS

"Upon the construction of a surface storage project or projects to store unused water herein allocated, users who become entitled to the yield therefrom may, at any point where water is physically available, divert water to use subject to approval of the commission and conditioned upon providing water in exchange for such diverted water as directed by the commission, so that other users, including owners of reservoir storage or owners of interest in waters stored, receive their entitlement of water in time, place, and quality the same as if the diversion and exchange had not been made.

"ARTICLE XVI. CHANGE OF POINT OF DIVERSION, MANNER, PURPOSE, OR PLACE OF USE

"Any change of point of diversion or of manner, purpose or place of use of the waters of the Carson, Truckee or Walker River Basins may be made in either state pursuant to state law or applicable court decree, provided that such change shall not adversely affect the allocation of water to the other state. Either state, if permitted by state law, may permit a change to other use of water formerly consumed by natural subirrigation on meadows. It shall be the duty of each state to initiate proceedings before the commission if it believes that such change in the other state would adversely affect its allocation. In the event of the initiation of such a proceeding a commission hearing shall be held and the person desiring the change shall have the burden of establishing that such change would not adversely affect the allocation to the complaining state. In the event the person desiring the change does not establish that such change would not adversely affect the allocation to the complaining state, the commission shall enter such order as it deems appropriate to assure that the allocation to the complaining state is not adversely affected.

"ARTICLE XVII. IMPORTED WATER

"The provisions of this compact respecting allocation of water are applicable solely to the waters of the Truckee, Carson, and Walker River Basins and the Lake Tahoe Basin. To the extent that either state imports into the Truckee, Carson or Walker River Basins or the Lake Tahoe Basin water from another river or source the state making the importation shall have the exclusive use of such imported water unless by written agreement between the states it is otherwise provided. Nothing herein shall preclude either state from using such imported water as replacement or exchange water to meet such conditions as may be imposed by the commission pursuant to the provisions of this compact.

"Article XVIII. Compact Effect

"A. Each state and all persons using, claiming, or in any manner asserting any right to the use of the waters of Lake Tahoe, Truckee River, Carson River, and Walker River Basins, shall be subject to the terms of this compact.

"B. The provisions of this compact shall be self-executing and shall by operation of law be conditions of the various state permits, licenses, or other authorizations relating to the waters of Lake Tahoe, Trückee River, Carson River and Walker River Basins.

"C. Nothing in this compact shall abridge, limit or derogate against any claim or right of anyone to the use of water in either state within the allocations to such state that could or may be made or established under state or federal law had this compact not been adopted; provided, that the place of use, under such right, of water from any of the four basins covered by this compact shall be limited to such basin or such other areas outside such basin as are permissible places of use of water from such basin under this compact.

"D. Nothing in this compact shall be construed as granting to any person or entity the right to divert, store, or use water.

"Article XIX. Violations

"A. Violations or threatened violations of any of the provisions of this compact which come to the attention of the commission shall be promptly investigated by it. If after such investigation the commission determines further action is necessary it may take such action as it deems advisable including, but not limited to, the commencement of an action injunctive or otherwise in its own name in any court of general jurisdiction of the state where the violation has occurred or is threatened, or the United States District Court for the district where said violation has occurred or is threatened, or if it is determined by the commission appropriate to do so, refer the matter with its recommendations, if any, to an appropriate federal, state, or local official or agency or board for action.

"B. In any action concerned with any matter in which the commission has made a decision, the findings of the commission shall constitute prima facie evidence of the facts found.

"Article XX. Recourse to Courts

"Nothing in this compact shall be construed to limit or prevent either state or any person or entity from instituting or maintaining any action or proceeding, legal or equitable, in any court of competent jurisdiction for the protection of any right under this compact or the enforcement of its provisions, provided that in all matters in which the commission is given jurisdiction by this compact to make a decision no such court action shall be commenced until the matter has been submitted to the commission for decision and decided by it, unless a decision by the commission has been unreasonably delayed.

"ARTICLE XXI. NONIMPAIRMENT OF RIGHTS OF UNITED STATES

"Except as provided in Article XXII nothing in this compact shall be construed as:

"A. Affecting the obligations of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

"B. Affecting any rights or powers of the United States of America, its agencies or instrumentalities in or to the waters of the Truckee, Carson, or Walker River Basins or the Lake Tahoe Basin, or its capacity to acquire rights in and to the use of said waters.

"C. Subjecting any property of the United States, its agencies or instrumentalities to taxation by either state or subdivision thereof.

"D. Subjecting any property of the United States of America, its agencies or instrumentalities to the laws of any state to an extent other than the extent to which such laws would apply without regard to this compact.

"ARTICLE XXII. RATIFICATION AND CONSENT

"This compact shall become effective when, but only if, "(1) It shall have been ratified by acts of the Legislature of each of the States of California and Nevada;

"(2) It shall have been consented to by act of Congress of the United States; and

"(3) Congress provides in its consent legislation or by separate legislation that the following provisions of the compact shall be binding on the agencies, wards, and instrumentalities of the United States of America:

"Article V, Section D

"Article V, Section F

"Article VI, Subsection B.1

"Article VI, Subsection B.3

"Article VI, Subsection B.4

"Article VI, Section D

"Article VII, Section A

"Article VII, Section B

"Article VII, Section C

"Article VII, Section D

"Article VII, Section E

"Article VIII, Subsection A.4(b)

"Article VIII, Subsection B.1

"Article VIII, Subsection B.5

"ARTICLE XXIII. TERMINATION

"This compact may be terminated any time by legislative consent of both states, but notwithstanding such termination all rights then established hereunder or recognized hereby shall continue to be recognized as valid.

"In witness whereof the commissioners have executed six counterparts hereof, each of which shall be and does constitute an original and one shall be deposited with the Administrator of General Services of the United States of America, and two of which shall be forwarded to the Governor of each signatory state, and one of which shall be made a part of the permanent records of the California-Nevada Compact Commission."

RESERVATION OF RIGHTS

SEC. 202. The right to alter, amend, or repeal this title is expressly reserved.

EFFECTIVE DATE

SEC. 203. The consent granted by this title shall take effect on the date the Secretary of the Interior certifies that conditions of section 107(a) have been satisfied.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Malcolm Wallop
Chairman
Subcommittee on Public Lands, Reserved
  Water and Resource Conservation
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to provide you with the comments of the Department of Justice on Senate Bill 1558, a bill to settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada, and for other purposes. Whether this legislation should be enacted involves questions as to which the Department of Justice defers to the Department of the Interior.

We recommend several technical and clarifying changes in Title I of S. 1558 consistent with Assistant Secretary Robert Broadbent's testimony before the Senate Select Committee on Indian Affairs on October 2, 1985. Attached is his testimony which describes the Administration's position on the bill. In particular, the Department of Justice review of Title II, the Compact itself, indicates that there are potential areas of conflict between it and Title I. We, therefore, recommend that a provision be added to Title I which would make it clear that in any dispute that may arise if this bill is enacted into law, the provisions of Title I shall supercede those on Title II. In this way, Title I would prevail over any inconsistent provisions in Title II.

The bill was drafted by representatives of the interests claiming rights to use water from the Truckee River in Nevada and is designed to induce settlement of competing claims of rights to use water from the Truckee, Carson and Washoe River systems in California and Nevada. Over the years the main points of contention have been among the water users of the Truckee River and Carson Rivers, with the focus being on the Truckee in Nevada.

The facts that have evolved in the lengthy litigation on these issues are as follows. The Truckee River flows from Lake Tahoe in California and terminates in Pyramid Lake, which has no outlet and which is owned by the United States in trust for the Pyramid Lake Paiute Tribe of Indians. Major claimants of the right to use or divert water from the Truckee, from the point it enters Nevada until it enters the Pyramid Lake Indian Reservation, include the Sierra Pacific Power Company, the Carson-Truckee Water Conservancy District, the Cities of Reno and Sparks, the Washoe County Water Conservation District, the Newlands Irrigation Project, and the Department of the Interior. Representatives of all these interests drafted the proposed legislation.

In 1913 the United States initiated a stream adjudication to determine rights to divert Truckee River water in Nevada. United States v. Orr Water Ditch Co., et al., In Equity No. A-3, USDC, Nevada. One purpose of the lawsuit was to quantify the state water right of the Newlands Irrigation Project, one of the earliest projects authorized under the federal Reclamation Act. In 1944, a final decree, generally referred to as the Orr Ditch decree, was entered in the United States District Court, and a water master was appointed by the court to administer the decree. The federal district court retains jurisdiction to administer the decree, and the water master and his staff continue to exercise their authority. There have been additional water rights to the Truckee granted by the State of Nevada since the date of entry of the Orr Ditch decree.

A similar lawsuit was initiated by the United States to quantify the rights to use water from the Carson River in Nevada. United States v. Alpine Land and Reservoir Co., Civil No. D-183, USDC, Nevada. The Newlands Project uses water from the Carson River as well as from the Truckee. A final decree (the Alpine decree) was entered in 1980. The court retains jurisdiction to administer this decree, and the water master who administers the Orr Ditch decree has also been appointed to administer the Alpine decree.

While the Orr Ditch decree defined the maximum right of each of the parties to the litigation to divert water from the Truckee in Nevada, it did not resolve all of the disputes. Under the decree, a person holding a decreed water right based on state law can divert the amount decreed to him only to the extent that he can put the water to beneficial use. Additionally, an owner of a right to divert water can divert only for the purposes recognized in the decree and for use at the place specified in the decree, unless a petition for a change in purpose or place of use is granted by the court. The United States and the Pyramid Lake Paiute Tribe have contended that holders of rights under the Orr Ditch decree have diverted more water than they can put to beneficial use and, in many cases, more water than the maximum diversions stated in the decree.

Pyramid Lake is the natural depository of all Truckee River waters that are required by law to remain in the natural stream, i.e., all waters that cannot be diverted and put to beneficial use under a state permit or certificate or pursuant to a court decree. Excessive diversion from the Truckee by water users upstream from Pyramid Lake necessarily deprives the Tribe of its full right to receive the surplus natural flow and place at serious risk two species of fish (the Lahontan cutthroat trout and the cui-ui) that live in Pyramid Lake and spawn in the Truckee River. None of the diversions made at Derby Division Dam by the Truckee Carson Irrigation District for the Newlands Irrigation Project return to the Truckee River; water which is diverted in excess of the Project's needs empties into the Stillwater Wildlife Refuge, a man-made wildlife refuge created solely from Newlands Project "waste" water. While much of the water diverted at other points from the Truckee eventually returns to the river, this water can be contaminated with chemicals from fertilizer and the soil, is often several degrees warmer than it would have been if it had remained in the natural stream, and reaches the fish spawning area of the Truckee substantially later than it would have if it had remained in the stream.

The excessive diversions have in the past lowered the level of Pyramid Lake, and for sustained periods the lake level has been so low that the trout and cui-ui have been unable to swim from the lake to the spawning areas in the river. If the fish successfully reach the Truckee to spawn, the eggs or fry can be placed at risk if the water from return flows is warm or contaminated.

This condition was the direct or indirect cause of a number of lawsuits or petitions, some of which are identified in Section 10 of the proposed legislation. 1/ The cumulative holdings in these lawsuits are that 1) the Pyramid Lake Tribe cannot assert a federally reserved water right, other than that recognized in the Orr Ditch decree, against the parties to the Orr Ditch decree or those who obtained state water rights in reliance on the decree (United States v. Truckee-Carson Irrigation District); 2) the Newlands Irrigation Project (and its manager, the Truckee Carson Irrigation Project) must reduce its diversions from the Truckee to no more than the amount necessary to irrigate those

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1/ Additional lawsuits are listed in Assistant Secretary of the Interior Broadbent's October 2, 1985, testimony before the Senate Select Committee on Indian Affairs on this legislation. In addition, the Tribe has lawsuits pending against the City of Reno and the Administrator of the Environmental Protection Agency regarding the City's expansion of its sewage treatment plant; the sewage plant lawsuits would not be affected by this bill.

lands within the project which have water rights and which are currently irrigated (Truckee-Carson Irrigation District v. Secretary; 3) persons who divert upstream from the Newlands Project diversion point (Derby Dam) must similarly reduce diversions to the amount necessary to irrigate lands with water rights that are currently irrigated (Water Master's Petition for Instructions filed in Orr Ditch); and 4) the Secretary of the Interior may regulate releases from Stampede Reservoir to assist the propagation of the trout and cui-ui despite the claims that Stampede water is necessary for the municipal and industrial needs of the Sierra Pacific Power Company and the Cities of Reno and Sparks (Carson-Truckee Conservancy District v. Secretary). While these principles have been judicially determined, legitimate disputes still exist among the several claimants as to the quantity of water that is available to those claiming diversion rights, the rate and timing of flows needed to restore the trout and cui-ui, and the manner in which the river system is to be managed to meet the criteria set by the courts. The proposed legislation is an effort by the water users to help amicably resolve these difficult disputes without further litigation. The bill in itself provides only the framework and the incentive for key agreements on water management to be reached sometime in the future. If these agreements are not reached within a year and one-half of enactment, the legislation would expire.

It is our understanding that most, if not all, of the parties who have been negotiating over the past several years suggested amendments at the Senate Select Committee on Indian Affairs hearings held on October 2 and 3, 1985. Our comments on the specific provisions of the bill are therefore subject to the modifications of the bill that may be submitted by the parties and to the caveat that our interpretation is based on our understanding of the intent of the drafting parties.

TITLE I

Section 101 contains findings of fact with which we have no dispute.

Section 102 is the definitional section. We have no difficulty with any of the definitions; we believe the term "by period" defined in subsection 102(10) should be "dry period."

Section 103(a) states that nothing in Title I shall be construed as modifying any court decrees, diminishing or impairing any property right, or providing a federal directive to the State Engineer of Nevada. Subsection (b) makes it clear that the parties to a suit in which a court decree has been entered are free to modify or terminate that decree (which, of course, would require the consent of the court).

The term "decree" is intended to mean a decree entered in the general stream adjudication of the Truckee River (the Orr Ditch case) and the Carson River (the Alpine case). Under Sections 105 and 111, judgments entered in the cases entitled Carson-Truckee Conservancy District v. Secretary of the Interior, Truckee-Carson Irrigation District v. Secretary, and Pyramid Lake Tribe v. Secretary would be overturned by the provisions in Title I, if the bill became effective. We see nothing in Title I per se that conflicts with either of the two court decrees. If all of the steps contemplated in Section 107 are completed, of course, the decrees may have to be modified in order to effectuate the agreements reached, and other currently pending cases will have to be dismissed. This can only be done with the permission of the court, but we see no difficulty in a court modifying its decree upon petition of all the parties.

Section 104 on its face requires the Secretary of the Interior annually to deliver to Pyramid Lake sufficient waters as may be necessary for the "maintenance and enhancement of the Pyramid Lake fish resource, wildlife conservation, outdoor recreation, environmental quality, economic development, and other purposes." It is intended that the Secretary's obligations will be conclusively deemed to have been fulfilled if the lake levels set out in 104(1) and 104(2) are maintained, and conclusively deemed not to have been met if the levels are not maintained. We believe that the language in the second sentence of 104 does not accurately reflect this intention and could be read to impose an additional obligation on the Secretary, over and above the maintenance of the lake levels, to maintain and enhance the fish, wildlife conservation, outdoor recreation, environmental quality, and economic development. We therefore suggest that the word "only" be deleted on page 7, line 2. We agree with Assistant Secretary Broadbent's addition to Section 110(b)(2) that no damages would be paid for failing to fulfill the requirements of Sections 104 and 110 when the annual Truckee River flow at Farad is less than 75% of the average flow at that location. It is also intended that, if the lake levels are not maintained, the exclusive remedy against the Secretary is set out in Section 110. We believe that this should be made clear by appropriate language in Section 104.

Section 105(a) requires the Secretary to "take actions as are necessary to meet his obligations under this title." Sections 104 and 106 spell out those obligations. The specific authority granted to the Secretary in subsection 105(a)(1)-(7) is intended to be in addition to any authority already possessed by the Secretary or the United States. See Section 105(k).

Subsections 105(b)-(g) provide for modification of the existing operation of Stampede Reservoir, which is currently operated by the Secretary to protect the endangered and threatened fish species. While the subsections are somewhat technical in nature, it is our understanding that Sierra Pacific Power Company (the utility that serves the Cities of Reno and Sparks) will receive specified amounts of municipal and industrial water from Stampede pursuant to an agreement with the Secretary and all other parties interested in the operation of Stampede. Subsections 105(b)-(d). Once those demands are met Stampede water will be used to maintain the fishery, with any extra water being given to the Carson-Truckee Water Conservancy District. Section 105(e). These subsections would modify the holding in Carson-Truckee Conservancy District v. Secretary.

Subsections 105(h)-(k) provide that if the Secretary acquires lands with appurtenant water rights, he will pay the Truckee Carson Irrigation District the annual assessment made on the land and make payments to the state in lieu of real property taxes assessed. These payments are to be made from the amounts appropriated by Congress to the Settlement Fund established in Section 108. The Secretary, if he acquires lands with appurtenant water rights, can petition the State Engineer to permit a change in place of use. Section 105(g). This would permit the Secretary to acquire water right lands in the Newlands Project, for example, and, rather than have the water diverted at Derby Dam, use the water for fish propagation in the lower Truckee. The State Engineer, pursuant to the provisions of Section 103(b), would not be required to grant the Secretary's change in use petition.

We note that subsection 105(f) refers to subsection 105(b)(1)-(4). This is obviously a typographical error, and we cannot determine the proper reference from the context of the subsection.

Section 106(a) requires the Secretary to formulate and commence a fish enhancement program to attempt to bring the trout and cui-ui to the point where they are no longer endangered or threatened, to restore to the maximum extent possible the natural spawning area in the lower Truckee River, and to operate and maintain existing fish hatcheries and fishways. Subsection 106(b) details actions the Secretary is required to undertake with respect to the fish enhancement program. It appears to us that subsection 106(a) and (b) are redundant since they both include restoration of the lower Truckee and operation of fishways and hatcheries and that an ambiguity exists as to the Secretary's responsibility; we therefore suggest that the subsections be edited to make the intent clear.

The Secretary can employ the authority vested in him by Section 105 and any other statute to fulfill the duties imposed by him under Section 106. It could thus be argued that even if he takes all the steps set out in 106(b), he would have a legal duty to undertake additional programs if the fish have not recovered to the extent that they were no longer endangered or threatened. However it is the intent of the parties that the Secretary's obligations under Section 106 and the Endangered Species Act shall be conclusively satisfied by the withdrawal of $16,000,000 from the Settlement Fund created in Section 108. If less than $16,000,000 is spent on Section 106(a) and (b) programs, the remainder will be deposited in the Tribal Trust Fund created by Section 109. The parties intend that the Secretary's obligations under 106(a) and (b) will be fully satisfied upon his expenditure of $16,000,000, or a lesser sum if the remainder is deposited in the Trust Fund. This limitation on the Secretary's obligation should be made explicit in Section 106(a). Subsection 106(c) makes it clear that, if the Secretary spends $16,000,000 on fish enhancement and is dissatisfied with the results, he has the discretion (but not the obligation) to spend additional monies that might be available to him for fish enhancement and to seek additional legislative authority if he deems it necessary.

Section 107 is a key provision of the legislation. It provides that nothing in the bill will become effective until agreements are reached among the parties regarding:

1) Operating criteria for, and diversions to be allowed to, the Newlands Project. The Secretary is not authorized to agree to any criteria or diversions that would be inconsistent to the Orr Ditch or Alpine decrees. We assume that any agreement on operating criteria and diversions would be submitted to the court for its approval, and modification of the decrees if necessary under 103(b), since the court has made it clear that any operating criteria will require judicial approval.

2) Operation of Stampede Reservoir to best effectuate restoration of the Lahontan cutthroat and the cui-ui and to provide municipal and industrial water to Sierra Pacific Power Company. We would note that Section 107(a)(10) states that the agreement will be between Sierra Pacific Power, Carson-Truckee Conservancy District, Washoe County Water Conservation District, the state of Nevada, the Truckee-Carson Irrigation District, the Tribe and the Secretary. Sections 105(b)-(e) do not include the Washoe County Conservation District or the Truckee-Carson Irrigation District among the parties who must agree to the Stampede contracts. This ambiguity should be clarified.

These agreements must be executed within one year of the date of enactment of Title I unless the time is extended for a period not to exceed six months as provided for in subsection 107(b)(2). Section 107(a) also requires specified actions be taken in certain pending lawsuits and appeals. Additional lawsuits being presented by the Tribe against the City of Reno and the Administrator of the Environmental Protection Agency regarding a sewage treatment plant on the Truckee River would not be affected by the legislation.

Section 108 establishes a Settlement Fund of $29,000,000, $8,000,000 of which comes from the state of Nevada and the remainder of which is to be contributed by the federal government. The fund is to be used to carry out the purposes of Title I, and it should be made explicit in the bill that the Secretary's obligations under Section 106 would be completely fulfilled by the expenditure of $16,000,000 of the Settlement Fund money and that none of the potential agreements referred to in the bill can require the expenditure of additional federal funds. We consider $21,000,000 to be the maximum cap on federal expenditures under this bill (as recommended by Assistant Secretary Broadbent in his testimony). According to the bill, Nevada is obligated to spend $8 million. If the Secretary spends less than $16,000,000 on the fish enhancement program set out in Section 106(a) and (b), the difference between the amount spent and $16,000,000 will be paid to the Pyramid Lake Tribe's Trust Fund established under Section 109. Any money over $16,000,000 that is not spent on Section 104 programs or under Section 110 presumably would be refunded to the Treasury.

Section 109 establishes a Tribal Trust Fund of $10,000,000 (paid from the federal treasury) and any amounts deposited in the Trust Fund from the Settlement Fund. Any Settlement Fund money deposited in the Trust Fund can be used by the Tribe only to enhance the fish resources so long as the fish remain on the endangered or threatened species list. It is apparently the intent of the negotiating parties that monies deposited in the Trust Fund pursuant to Section 110 also will only be used for fish enhancement until the species have recovered. Assistant Secretary Broadbent has proposed an amendment to Section 109(b) to reflect this understanding. We believe the term "and 110" should also be inserted after "108(f)" in Section 109(c)."

Section 110(a) provides that, if the Secretary does not fulfill the obligation imposed by Section 104, he shall pay the Tribe an amount equal to the cost of water necessary to maintain lake levels. The obligation imposed by Section 104 is solely the obligation imposed to maintain lake levels established by subsection 104(1) and 104(2). The term "damages" used in Section 110 is somewhat misleading. It is not intended, if the lake level are not maintained, that the Tribe could sue the United States in the Claims Court to recover liquidated damages for breach of the Secretary's obligation. Rather, it is intended that the Secretary will pay the amount due from the Settlement Fund or out of other Interior Department funds, if available. If such funds are not available, Congress would have to appropriate additional money; the Tribe could not sue for failure to pay in the Claims Court and attempt to recover from the Judgment Fund. We endorse Assistant Secretary Broadbent's clarifying amendment on this point. Subsection 110(b)(1) provides that the United States (and presumably the Secretary cannot recover, from any person or entity, any of the amount that may have been paid under 110(a)). We understand that the drafters of the bill intended that if the Secretary would be able to sue to recover amounts paid under subsection 110(a), he would have no incentive to take legal action to restrict diversions, or to engage in other activities authorized by Section 104, to ensure that the appropriate lake levels were maintained; rather he would be inclined to "sell" the water to upstream diverters by permitting them to recover any monies that he might have to pay the Tribe. The Tribe is much more interested in maintaining lake levels than it is in receiving compensation and the parties to the negotiations view subsection 110(a) and (b)(1) as an effective tool to achieve this goal while minimizing contentious litigation. Subsection 110(b)(2) limits the amount that the Secretary will be required to pay to the Tribe in any one year.

Section 111 provides that the owners of water rights in the Newlands Project will be forgiven their repayment obligations for construction of the project. They will still be responsible for the repayment of operation and maintenance charges. Under Section 111(b)(1) the Truckee-Carson Irrigation District would be given statutory authority to operate and control the Newlands Project. Currently the District operates the Project as agent of the Secretary of the Interior. A prior contract between the Secretary and the District was terminated by the Secretary because the District failed to comply with the Secretary's operating criteria and procedures. It appears that 110(b)(1) could be construed to prevent the termination of the District's authority, other than by an act of Congress, if the District fails to comply with operating criteria and procedures in the future. We recommend that language be inserted to make it clear that the Secretary's authority to terminate the District's agency authority would not be impaired by the bill. Section 111(b)(2) provides that future operating criteria and procedures must be agreed to by the Secretary, the District, the Tribe and the state of Nevada. Currently the Secretary has exclusive authority to publish operating criteria and procedures.

Section 112 makes it clear that all provisions of the bill are subject to the regular appropriation process.

Section 113 states that actions taken by the Secretary pursuant to specified provisions of the bill will be exempt from the National Environmental Policy Act. Subsection 113(b)(1) states that actions taken under specified provisions would be deemed to be in full compliance with, and may be taken without regard to, provisions of the Endangered Species Act. The parties intend that the exemption to the application of the Endangered Species Act applies only to the procedural aspects of said Act, and Section 113 is not intended to affect the endangered and threatened status of the cui-ui or trout.

TITLE II

Title II ratifies the California-Nevada Interstate Compact designed to promote an equitable apportionment of the water within Lake Tahoe, the Truckee, the Carson, and Walker River basins. The state of Nevada desires ratification of the Compact in return for its $8,000,000 contribution to the Settlement Fund established in Title I.

An apparent conflict exists between Article VI.A. of the Compact which allocates "to Nevada water for use on the Pyramid Lake Indian Reservation in amounts as provided in the 1944 Truckee River Decree" and Sections 104 and 106 of Title I. Under the decree the Tribe can divert the amount of water necessary to irrigate 5,875 acres, an amount insufficient to maintain the lake level or the fish species and an amount clearly insufficient to meet the purposes of Title I. Likewise, it appears that Article VI.B.4(a) may contain inhibitions on the use of water stored in Stampede Reservoir that would conflict with the provisions of Sections 105(b)-(g). Article VI.D. allocates to the state of Nevada all water in excess of the allocations made in Sections B and C of the article; and this may conflict with the ability of the Secretary to fulfill his obligations under Title I. Article VII.B. defines the rights of the state of Nevada to Carson River water; it is our understanding that the Compact was drafted before entry of the Alpine decree and we do not know if Article VII is consistent with that decree; if not, Article VII would conflict with Section 103(a)(1)(A) of Title I.

Article VIII of Title II defines the rights to the Walker River basin. Aside from the state of Nevada none of the participants in the negotiations leading to the drafting of the proposed legislation has any interest in the Walker River basin. We are aware that the Walker River Indian Tribe has expressed concern about Article VIII because the Tribe believes it unlawfully restricts its rights and because the Tribe was not consulted when either the Compact or the bill were drafted.

The Compact is unusual in that it would define not only the rights of the parties to the Compact but also federal rights that are not held under color of state law, and subject the exercise of those rights to the jurisdiction of the "California - Nevada Compact Commission" created in Article IV and empowered to make findings as to water use and availability in each state, enforce orders that it issues "as deemed necessary," appoint hearing examiners, enter upon all properties in any of the basins, subpoena witnesses and documents anywhere in the United States, declare states of emergency, conduct hearings on change in purpose and place of use petitions, suppress use of groundwater, and initiate legal actions to prevent violations or threatened violations of any provision of the Compact in which findings of the Commission would be prima facie evidence. Article XX limits the right of any person to initiate or maintain any action in court "for the protection of any right under this Compact or for the enforcement of its provisions" without first submitting the matter to the Commission for its decision. Although the Compact would restrict federal reserved water rights, the only federal presence on the Commission would be a non-voting chairman.

To the extent that the Commission could be considered to have responsibility for enforcing federal rights and obligations, not grounded in state law, the Commission would begin to resemble, at least in practical terms, a federal agency. In Buckley v. Valeo, 424 U.S. 1, 126 (1976), the Supreme Court noted that similar wide-ranging enforcement powers given to the Federal Election Commission constituted "executive" functions that could be performed only by "officers of the United States," appointed by the President or the head of a federal executive department in conformance to the Appointments Clause of the Constitution. 424 U.S. at 141. Because the members of the Commission would not be appointed in conformance with the Appointments Clause, we recommend that language be added to the bill that would condition consent to the compact on Congress' understanding that the Commission would have no authority to enforce any rights that are grounded solely on federal law.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Phillip D. Brady
Acting Assistant Attorney General
Office of Legislative and
Intergovermental Affairs

Senator **Wallop**. I would like to turn now to the first witness, Assistant Secretary Broadbent.

Good morning, Bob. It is a pleasure to have you here this morning.

STATEMENT OF ROBERT N. BROADBENT, ASSISTANT SECRETARY, WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY DR. F. EUGENE HESTER, ACTING DIRECTOR, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. **Broadbent**. Thank you very much, Mr. Chairman.

If possible, I would like to have my statement entered in the record, and if it is all right with you, I would like to just comment on my perspective on this settlement.

As you know, Mr. Chairman, I am a resident of this State, the State of Nevada and have been for many years, and for the last 4 years have been actively engaged in the negotiations on this settlement.

All of the things that have been said about it being in long litigation and it being a very divisive issue in the State of Nevada for the water rights users along both the Carson and the Truckee Rivers I think go without saying.

I think it is a credit to the parties that they were willing to sit down over these past few years and negotiate. There have been millions of dollars spent in litigation on this bill, and feelings are hard, they are tense, they are solid, and yet they were willing to sit down and negotiate.

As your statement says, I think we need to recognize that this is a complex bill, and it is a complex compromise. Nobody got exactly what they wanted out of the bill. And, as such, I think it has at least the making of a good bill.

I would not say that there cannot be amendments in the bill. There have been some suggested amendments by the tribe that have already been agreed to by all of the other Nevada parties. There are several other issues that were brought up by the tribe that I think there can be agreement on. One of those is the lakebottom issue, which I think was resolved by the Governor when he said that as a result of litigation, he felt that it was now a nonissue and could be resolved in the other issue that was brought up in a September letter by the tribes' attorneys to the Secretary of the Interior, the issue of title I and the compact and which one took priority.

We have been working with the Justice Department and have a couple of suggested amendments, just about completed, that we think might satisfy both the tribe and the State of Nevada as we look at a resolution that would say the compact and title I of the bill can be looked at as being in comformance.

There are five or six main interests in this bill. Let me take a minute and look at where we are today.

Today we have a growing metropolitan area in northern Nevada, Reno-Sparks, that is short of water. They need a water supply. They are really denied it without some litigated settlement.

We have a farming area called Truckee-Carson Irrigation District, or the Newlands project, that is under increasing litigation, and it is, in essence, breaking those farmers, literally, by their litigation expense.

They fought through and won a Supreme Court decision that said they were entitled to water, under the Orr Ditch and Alpine decrees. But at the same time, they are not entitled to waste any of it.

I think this gives us a basis for a resolution of that issue.

We have the State of California, which has some major interests in Lake Tahoe and some other places that we think might go a long way toward satisfying some of those problems that are in the compact, and I think the State of California's testimony so indicated that.

We have the State of Nevada, which has been living under the compact for many years, as has the State of California, and feels a need for ratification of the compact so they can quantify their water rights to the three rivers, the Walker, the Carson, and the Truckee. Parts of them are already quantified by decrees, but this certainly would give them a clear understanding of what their rights to those waters are.

We have the rights of the Pyramid Lake Paiute Indian Tribe. They have an endangered and threatened species on the Truckee River that runs into Pyramid Lake, and certainly without disagreement the survival of the cui-ui fish is really in jeopardy. We are not sure that this agreement will completely bring the fish out of jeopardy; but it certainly will enhance its opportunity to survive.

The Lahontan cutthroat trout is a threatened species, and that is really a put-and-take species, which is done by planting.

We think that what we would do here would certainly enhance their right of survival as well as the economic benefit that the tribe gets off of the cutthroat.

Senator **Wallop**. Bob, would you forgive me just one interruption here?

How can a species be threatened by this put-and-take situation? I mean, if you can rear it.

Mr. **Broadbent**. That is my understanding that there is no successful spawning of the Lahontan cutthroat and that it is done by fish hatcheries.

We have Dr. Hester here from the Fish and Wildlife Service and I think he might be able to answer that question after I am through.

Dr. **Hester**. Mr. Chairman, the Lahontan cutthroat trout occupies a range in addition to the Pyramid Lake. And so it is not as restricted as the cui-ui. That is one of the reasons why it is threatened, rather than endangered.

It is a managed species.

Senator **Wallop**. But if it is possible to propagate it, then it is possible to propagate it out of its threat.

Dr. **Hester**. Well, the objective of the Endangered Species Act is to recover species sufficiently so that it does not require that kind of annual investment in propagation.

Senator **Wallop**. OK, I'll take your word for it.

Dr. **Hester**. There are a number of cases in which we have to supplement populations by growing animals in the wild, all the way from whooping cranes to fish. But that is not the total objective.

Senator **Wallop**. Well, I think you would agree with me that whooping crane propogation is rather more difficult than fish propagation.

Dr. **Hester**. Yes, it is.

Senator **Wallop**. It isn't particularly relevant to this. It is just one of those curiosities that you stumble across. It would seem to me that that is one threat that can be viewed as at least de minimis with regard to being endangered. You are not going to, in this piece of legislation, make it possible for it to be delisted.

Dr. **Hester**. This legislation concerns much more than the cui-ui.

Senator **Wallop**. I understand. Thank you, and I'm sorry for the interruption.

Go ahead.

Mr. **Broadbent**. I think certainly that points out that the Lahontan cutthroat fishery is an important economic base for the Paiute Tribe on the Pyramid Lake Reservation, and as such it is important to keep that fishery successful for them economically, whether it is delisted, threatened, or whatever it might be.

I think there are reasons to believe that there could be some changes in that in the near future, and we think we would like to work toward that, and we think this bill would allow us to do that.

Then we have the interests of the people in Stillwater Wildlife Refuge, which is a refuge that is below Newlands project. This refuge is a major refuge for some of the migratory birds, particularly, I understand, canvasback ducks.

Under the decrees and under State law at the present time, there is no water right for Stillwater Wildlife Refuge.

Under our bill, we would mitigate, as much as possible, any loss of water to protect that wildlife refuge. We think that's another important factor in this bill that largely goes sometimes overlooked, because without this bill, we think there is a good chance that there could be a major reduction in the value of Stillwater Wildlife Refuge.

Since it appears that an endangered species has priority over a wildlife refuge for ducks, then the water would have to go to where the endangered species is, and you would not be able to protect Stillwater. That certainly is a major concern to the State because it is a major hunting area for the State of Nevada.

I have hunted there myself many times.

For the Federal Government, it gets us out of a long history of costly litigation. We have actually committed millions of dollars over the years of Federal money in litigation, litigation strategy, the costs of consultants, and everything else, as we have tried to resolve these tough issues on the river.

There have been major attempts to resolve this issue over the years. There have been negotiating teams appointed, in 1968, and again in 1979, to look at trying to find a settlement of this issue on these river systems.

I will not tell you that the legislation today is perfect. I think it provides a vehicle for people to sit down and negotiate. I think there is a possibility that in the next few months we can reach an agreement which will allow us to settle this longstanding issue on these river systems.

The administration supports that kind of negotiated settlement and would be very happy to work with you and your staff and the other Members of the Senate and the House in trying to reach an agreement on this very complicated piece of legislation.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Broadbent follows:]

Statement of Robert N. Broadbent
Assistant Secretary for Water and Science
Accompanied by Eugene Hester, Associate Director, Fish and Wildlife Service
Witnesses for the Department of the Interior before the
Senate Energy Subcommittee
on Public Lands, Reserved Water, and Resource Conservation
on S. 1558
October 21, 1985

Mr. Chairman and Members of the Committee, it is a distinct pleasure to be here today to offer the Administration's views on the proposed Truckee River-Pyramid Lake settlement legislation which has been introduced by the Nevada delegation. We believe that this legislation offers an opportunity fairly and responsibly to settle the many serious water-related disputes that have plagued northern Nevada for over 70 years. We urge prompt passage of this legislation by the Congress, including some modifications of a clarifying and limiting nature as discussed below.

The legislation which you have before you today represents the results of over 5 years of intense effort to settle one of the longest standing and perhaps the most contentious Indian water rights disputes in the Western United States. Beginning in early 1981, the Department, at the specific urging of Senator Laxalt, has labored to bring all the various parties together to produce a settlement of these issues. The parties to these negotiations have included:

Pyramid Lake Paiute Tribe
Truckee-Carson Irrigation District
Sierra Pacific Power Company
Carson-Truckee Water Conservancy District
Cities of Reno and Sparks
Washoe County Water Conservation District
States of Nevada and California
Department of the Interior

I wish to take this opportunity to commend all these parties for their willingness to set aside their differences and to fashion a settlement in a spirit of compromise and fairness. We feel that this settlement will provide the mechanisms necessary to secure much needed municipal and industrial water for the Cities of Reno and Sparks, and Washoe County, Nevada, as well as parts of California, without which fierce competition for water would continue unabated. The settlement also provides, we think, viable mechanisms to work toward the goal of ensuring the survival of the Lahontan Cutthroat Trout and the cui-ui. The reservoir exchange agreement on the Truckee River has the potential to provide more water with better timing than the current use of Stampede Reservoir exclusively for the fishery. The restoration of the Lower Truckee River, which will include replacing some historic meanders and the tree canopy which historically shaded a good portion of the river and maintained lower water temperatures, will be a significant benefit for fish spawning. The improvements to Marble Bluff Dam and Fishway will have a major impact in aiding the ability of the fish to swim up the Truckee River for spawning. The improvements and additions to hatchery facilities will provide a needed backup to natural spawning. The biological studies are essential to determine the flow and water quality requirements of the fishes.

The development of workable and reasonable operating criteria for the Newlands Project will provide a dependable bench mark to determine Truckee River diversions. This information is essential to determine the amounts of water available to the fishery.

The dismissal of pending lawsuits following enactment of the bill would free up monies that can be better utilized in the maintenance and upgrading of existing facilities outside the Reservation. On the Reservation, monies previously used for litigation could be used for the economic development of the Tribe. The United States would also save substantial litigation costs. Finally, the long-awaited ratification of the California-Nevada Interstate Compact would have many subsidiary benefits for both States. The present state of uncertainty prevents long-term planning for the rational use of a severely limited but absolutely essential natural resource, namely water.

Department Concerns

We strongly support enactment of legislation. Additional concerns have come to light upon broader Administration review. We and the Department of Justice would be pleased to work with the Committee to address the following technical concerns.

1. The obligation of the Secretary to deliver water in section 104 should be clarified by deleting "only" on page 7, line 2 to make clear that failure to meet the following listed two criteria as the sole basis for assessment of damages under section 110.

2. Limitation on damages. A sentence should be added at the end of section 110(b)(2), to read:

"Provided that no damages would be paid in any year when the annual Truckee River flow at Farad is less than 75 percent of the average flow at that location." This is to limit the exposure of the Federal Government from having to pay damages because of factors completely beyond Federal control, after all feasible steps have been taken within the terms of this settlement to furnish water.

3. Use of Payments. The first sentence in Section 110 should be revised to read:

> "Subject to the conditions provided in subsection (b), to meet the obligations in Section 104, he shall pay from funds available to the Department of the Interior to the Tribal Trust Fund authorized in Section 109, an amount equal to the replacement cost of such...."

The first sentence in Section 109(b) should be revised to read:

> "There shall be added to the Tribal Trust Fund any amounts credited to the fund under Sections 108(f) and 110. Until such time as the Lahontan Cutthroat Trout and the cui-ui shall no longer be listed as having been designated as either a threatened species or an endangered species, any monies credited to the Tribal Trust Fund pursuant to Sections 108(f) and 110 and any income earned thereon shall be expended only for the purpose of enhancing...."

4. Section 108(f) of the bill does not properly recognize that the obligation of funds within 5 years is contingent on annual congressional appropriations rather than the discretion of the Secretary.

5. Section 109(d) would provide that amounts appropriated to the Treasury for deposit in the "Pyramid Lake Paiute Tribe Trust Fund" would earn interest from the date of enactment of the bill. We note that until monies are appropriated by the Congress, there is nothing on which to earn interest, and recommend that the bill be amended to provide for interest beginning on the effective date of the Act.

6. Section 110(a) would direct the Secretary to pay such amounts up to $7 million for any failure to meet his obligations to make certain water

deliveries for the Tribe. However, there is no authorization of appropriations in the bill for the Secretary to pay such amounts.

7. While we believe that the legislation is clear about the State and Federal funding ($29 million) for the Settlement Fund, we would like to emphasize that the Administration views the $29 million program as a funding cap and that additional appropriations are not required nor to be deemed necessary to fulfill the Secretary's obligations under this legislation. It may be desirable to amend the bill's language to remove ambiguity on this point.

8. We note that the Truckee-Carson Irrigation District under the proposed legislation would be exempted from the requirements of the Reclamation Reform Act of 1982. Though this would be the second or third irrigation district exempted from compliance with Reclamation law, we are concerned about the additional precedent of continuing to grant these

exemptions.

9. Under Section 107(a)(10) and (11), the operating criteria for the Newlands Project and the Stampede reservoir operating criteria are subject to agreements agreed to by the Secretary of the Interior. We wish to emphasize that no additional Federal financial obligations are contemplated in connection with these agreements, and that no funding should be authorized for that purpose. The maximum Federal contribution to this settlement is already included in this bill.

10. We believe that clarifying language should be added to the bill to ensure that the provisions of Title II are construed in harmony with Title I. We would be pleased to work with the Committee to develop appropriate amendatory language.

11. Finally, we note that some concerns have been raised about the interpretation or application of provisions of this bill to the rights or interests of Indian tribes. We would be pleased to work with the Committee to address these concerns.

Background

The Truckee, Carson and Walker River systems run generally parallel to each other in an easterly direction commencing in the Sierra Nevadas in California and terminating within closed basins in Nevada. The Truckee and Walker rivers flow into Pyramid and Walker lakes, two desert lakes of considerable beauty and deep significance to the Pyramid Lake Paiute and the Walker River Paiute Indian Tribes. The Carson River flows into the Stillwater Wildlife Management Area, an important waterfowl area on the Pacific flyway, and then into the Carson Sink, a large shallow area that fills with water during wet periods, and dries completely during droughts. The Sierra Nevadas accumulate a widely variable snowpack that results in extended wet and dry periods that can last up to 20 years. Lake Tahoe, a large, deep and beautiful Alpine lake, is located on the upper reaches of the Truckee River.

Numerous and growing demands on the water in these three river systems create a situation of intense competition for a limited water supply.

Newlands Project. The Newlands Project was one of the first five projects built by the Bureau of Reclamation. Derby Dam, located on the Truckee River, was constructed in 1905 and diverts Truckee River water into the

Truckee Canal and then to Lahontan Reservoir on the Carson River. Water is released from the Truckee Canal and Lahontan Reservoir to irrigate up to 73,000 acres of Newlands Project land in the Truckee Carson Irrigation District (TCID). The majority of the return flows from these lands go to the Stillwater Wildlife Management Area and to the Carson Lake pasture. The two main storage facilities for the Newlands Project are Lake Tahoe and Lahontan Reservoir. A small dam on the Truckee River outlet to Lake Tahoe controls the top 6 feet of the Lake, which regulates about 732,000 acre-feet of water. This storage provides essential water during drought periods to the Newlands Project as well as to other water users on the Truckee River. Lahontan Reservoir has a storage capacity of 317,000 acre-feet.

Truckee Storage Project.The Truckee Storage Project consists of Boca Dam on the Little Truckee River, which was completed in 1939. This storage facility (capacity 40,000 acre-feet) provides supplemental water to private irrigators in the Truckee Meadow area and Reno and Sparks, Nevada.

The Washoe Project.The Washoe Project consists of Stampede Reservoir (completed in 1970) on the Little Truckee, Prosser Creek Reservoir (completed in 1962) on Prosser Creek, and Marble Bluff Dam and Fishway (completed in 1975) on the Truckee River near Pyramid Lake. The Watasheamu Dam authorized for construction on the East Fork Carson River has never been built because it has not proven to be economically feasible. The original purposes for the Washoe Project were to provide supplemental water for irrigation, municipal and industrial uses, fish enhancement, recreation, power, and flood control. In the early 1970's, the Secretary of the Interior elected to use Stampede Reservoir (225,000 acre-feet capacity) exclusively for the benefit of the listed Pyramid Lake fish species, the endangered cui-ui and the threatened Lahontan Cutthroat Trout, until such time as these fish are no longer on the endangered and threatened lists. The Ninth Circuit Court of Appeals has upheld the Secretary's right to exercise his discretion in this manner. This has precluded the use of Stampede Reservoir for the provision of municipal and industrial (M&I) water to the cities of Reno and Sparks, Washoe County, Nevada; and to certain parts of California as contemplated in the Washoe Project Act.

Other Facilities.In addition to the Federal Reclamation projects already discussed, there are a number of private structures and facilities on the

Truckee and Carson Rivers. Principal features include several diversion structures on the Truckee River for irrigation in the Truckee Meadows, diversion structures on the Lower Truckee River for irrigation on the Pyramid Lake Indian Reservation, Storage and diversion structures on the Upper Carson River for irrigation in the Carson Valley, two storage facilities on the Truckee River in California (Independence and Donner Lakes), and 4 hydropower plants on the Truckee River.

Pyramid Lake. The net result of the construction of these various projects has been a major reduction in the inflow of water to Pyramid Lake. Because the lake is the terminus of the Truckee River, that reduction created a situation in which the outflow (evaporation from the surface area of the lake) greatly exceeded the inflow. In 1867, the earliest recorded lake elevation was 3,875.9 feet above mean sea level. In 1967, the lake reached its lowest elevation at 3783.9 feet.

The surface area of the lake receded from 144,000 acres to 107,000 acres during the same time period. Because of the reduced surface area, a new equilibrium has resulted where inflow and outflow (evaporation) appear to be more or less equal. From 1966 to 1981 the lake level remained relatively constant (3,787 feet to 3,789 feet, respectively). Since 1981, the level of the lake has risen 24 feet to its present elevation of 3,811 feet, mainly due to high runoff years.

Lake Winnemucca, a companion lake that historically received over flow from Pyramid Lake during wet years, had a surface area of about 70,000 acres, and has since become totally dry. That lake has not been revived by the recent period of wet years.

Another major reason for Pyramid Lake elevation levels remaining constant or rising in recent years is that the operating criteria and procedures (OCAP) have been in place for the Newlands Project which the Secretary of the Interior has implemented along with the Truckee Carson Irrigation District. These OCAP have significantly reduced Newlands Project diversions from the Truckee River. I will be discussing these operating criteria in more detail later in my testimony.

Pyramid Lake Fish Species. The reduced inflow and drop in Pyramid Lake levels has had a severe impact on the endangered cui-ui (chasmistes cujus), a unique sucker fish found only in Pyramid Lake, and the threatened Lahontan Cutthroat Trout (salmo clarki henshawi), a large species of trout, found in several lakes and rivers in west-central Nevada and east-central California. Both species live in Pyramid Lake, are river spawners, and require cool water temperatures for successful reproduction. Diminished river flows and consequent elevated river temperatures have severely limited the spawning success of the two species. Additionally, as Pyramid Lake levels declined, a delta was formed at the Truckee River inlet to the lake which produced a barrier to the upstream migration. Although Marble Bluff Dam and Fishway were built to alleviate this latter problem, they have been only partially successful.

The Lahontan Cutthroat Trout endemic to Pyramid Lake became extinct in the 1940's. The strain of trout presently found in the lake is a hybrid produced from populations in neighboring lakes and closely resembles the original strain. The population is maintained through hatchery production. The cui-ui, a long-lived fish (up to 40 years), only needs to have successful spawns occasionally, and because of this, has managed to continue to exist. Unfortunately, only one significant year class of cui-ui, produced in 1969, is actively spawning. In every year since 1980, except 1981, there have been cui-ui spawning runs, but the number of fish produced is not yet known. Individuals do not enter the reproductive population until they are 6 or 7 years old, and, therefore, have not begun swimming up the river where they can be counted.

Newlands Project Operating Criteria and Procedures (OCAP). At the request of the Pyramid Lake Paiute Tribe, an interagency task force was formed by the Secretary of the Interior in the 1960's to develop operating criteria to limit the diversions to the Newlands Project to only those amounts of water necessary to meet water delivery requirements. This resulted in what has become known as the 1967 OCAP.

The Pyramid Lake Paiute Tribe was dissatisfied with those OCAP and filed suit in the Federal District Court in Washington, D.C. That lawsuit resulted in a set of Court ordered operating criteria which were much more restrictive than those developed by the task force. These criteria are known as the 1973 OCAP.

The Truckee-Carson Irrigation District (TCID) that operates the Newlands Project for the United States, refused to implement the 1973 OCAP when directed to do so by the Bureau of Reclamation. TCID claimed that the highly restrictive OCAP would have a devastating effect on project water users. The United States then cancelled its 1926 operating and repayment contract with TCID. This resulted in another lawsuit (District vs. The Secretary), in which TCID claimed that its contract could not be legally cancelled.

In December of 1983, the Secretary's authority to cancel the contract was affirmed by the Ninth Circuit Court of Appeals after being first upheld by the Federal District Court in Reno, Nevada. The U.S. Supreme Court refused to hear the case.

The Secretary's authority to implement the 1973 OCAP has been upheld, but certain other court decisions that have been made since 1973 make it necessary to update those criteria. Since December 1983, the Bureau of Reclamation has been laboring to produce OCAP which conforms to the valid requirements of the 1973 decision and incorporates other legal limitations. An Environmental Impact Statement is being written to support the development of the OCAP.

Concurrent with the development of operating criteria, an intensive effort has been underway to reach a negotiated settlement on the Truckee River which would resolve all disputes and terminate the lawsuits. The legislation before the Committee today provides for a 12-month period to allow for the development of OCAP upon which all parties (TCID, the Tribe, the State of Nevada and the Secretary) can agree.

Other Litigation

What follows is a list of the various lawsuits that have grown out of the numerous water use conflicts in the Truckee-Carson River Basin. The first ten are background lawsuits that relate to water rights and usage; the last six are those lawsuits that will be dismissed as a part of the settlement.

A. Background Lawsuits

1. 1915 Decree -U.S. v. Truckee River General Electric Company (now Sierra Pacific Power Co.)

The decree terminated an attempt by the U.S. to condemn land owned by the Sierra Pacific Power Company on the Lake Tahoe lake front on either side of the Truckee River. The condemnation was undertaken to gain the use of Lake Tahoe as a natural storage reservoir for Lake Tahoe Dam, part of the Newlands Project. Instead, the Court granted the U.S. an easement on a 14-acre tract for a payment of $139,000. The decree states that the Government must operate Lake Tahoe dam at Floriston Rates: 500 cubic feet per second (cfs) March 1 - September 30 and 400 cfs October 1 - February 28,29

2. U.S. v. TRGEC, 1961 - Modification of 1915 Decree of the same name - incorporated a Prosser Creek Reservoir agreement for the exchange of waters between Prosser Creek Reservoir and Lake Tahoe.

3. Sept. 8, 1944, Truckee River Decree or U.S. v. Orr Water Ditch Co. (filed March 30, 1913). The U.S. sought and achieved adjudication of water rights of water users on Truckee River in Nevada. The decreed water rights include a right for the Pyramid Lake Indian Reservation for irrigation of 5,875 acres of lands with a priority date of December 8, 1859, and a right for the United States with a priority date of July 2, 1902, for diversions of water through the Truckee Canal to the Newlands Project.

4. October 24, 1958, Sierra Valley Decree or U.S. v. Sierra Valley Water Co. Based upon a stipulation between the U.S. and Sierra Valley Water Company, the decree granted the Sierra Valley Water Company the right

to divert a maximum of 60 cfs flow from the Little Truckee River during the irrigation season each year.

5. Anderson-Bassman Decree of Nov. 27, 1905. This suit adjudicated rights on the west fork of the Carson River between certain users in California and users in Nevada.

6. Price Decree of Dec. 10, 1921 This decree provided entitlements to use water from the west fork of the Carson River in California.

7. U.S. vs. Alpine Land and Reservoir Company, Civil No. D-183 BRT, filed May 11, 1925; final decree entered and subsequently affirmed by Ninth U.S. Circuit Court of Appeals on January 24, 1983. Through this litigation, the U.S. sought and achieved adjudication of all water rights on the Carson River.

8. TCID v. Secretary of the Interior, Civil No. R-74-34 BRT, filed March 1974 in U.S. District Court, Reno, Nevada; affirmed by the Ninth Circuit Court of Appeals; certiorari review denied by the U.S. Supreme Court. The court ruled that the Secretary had the right to terminate the 1926 operating and repayment contract with the Truckee Carson Irrigation District, and the District could not refuse to implement the operating criteria and procedures issued by the Secretary.

9. United States v. TCID, Nos. 81-2245, 81-2276, and 82-38; (Consolidated for certiorari review by the U. S. Supreme Court as State of Nevada v. U. S. October Term, 1982); appealed by the U.S. to the Ninth Circuit Court and to the U.S. Supreme Court. This case involved a claim by the United States on behalf of the Pyramid Lake Tribe asking for a reserved water right for the Tribe in order to meet the needs of the Pyramid Lake Fishery. The District Court ruled, and the U.S. Supreme Court affirmed that the Tribe could not claim a reserved right against other parties to the Orr Ditch Decree in excess of the amount decreed to the tribe in the Orr Ditch Decree; i.e., water for the irrigation of 5,875 acres of land on the Reservation.

10. Carson-Truckee Water Conservancy District v. Secretary, Civ. No. R-76-156-GJS, U.S. District Court, Reno, Nevada; certiorari denied by the U.S. Supreme Court. This suit was filed on October 1, 1976, by the Carson-Truckee Water Conservancy District, the Sierra Pacific Power Company, and the State of Nevada, alleging that the provisions of the Washoe Project Act compel the Secretary to enter into a cost reimbursement contract with the Carson-Truckee Water Conservancy District for the sale of M&I water out of Stampede Reservoir. The district court ruled and the appeals court confirmed that the Secretary acted within his discretion when he reserved the use of Stampede Reservoir water primarily for fishery purposes until such time as the fish are no longer listed under the Endangered Species Act.

B. Lawsuits Being Dismissed with Settlement

1. Pyramid Lake Paiute Tribe of Indians v. California, et al, Civ. No. S-81-378 RER, U.S. District Court for the Eastern District of California. This case is a class action suit filed by the Pyramid Lake Paiute Tribe on June 23, 1981, to adjudicate the rights of all California users on the

Truckee River that are adverse to the claims of the Pyramid Lake Tribe. At issue are the Tribe's rights to the use of waters of the Truckee River for maintenance of the Pyramid Lake and Truckee River fishery.

2. United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada. This case involves a claim by the Tribe for a water right on the Truckee River which would have a greater priority than any rights not already adjudicated in the Orr Ditch decree and confirmed in Nevada v. U.S., noted above.

3. The appeal of the Pyramid Lake Tribe in United States v. Orr Water Ditch Co., No. 85-1880, Ninth U.S. Circuit Court of Appeals. This is the Tribe's appeal of United States District Court, District of Nevada decision allowing diversions of Truckee River water to the Newlands Project by the Federal Water Master.

The Tribe's and the Secretary's appeals from the State Engineer's ruling in United States v. Orr Water Ditch Co., Equity A 3-WEC. United States v. Alpine Land & Reservoir Co., D-183-BRT, in the United States District Court for the District of Nevada. These cases involve the granting the applications to transfer Newlands Project water rights to other Newlands Project lands. This is the Tribe's effort to prevent the transfer of water rights on the Newlands Project.

5. Pyramid Lake Paiute Tribe of Indians v. Hodel, No. R-85-197-BRT, United States District Court for the District of Nevada. The Pyramid Lake Paiute Indian Tribe brought suit challenging operating criteria issued by the Secretary of the Interior for diversion of water from the Truckee River. The Court ordered the establishment of more restrictive Operating Criteria and Procedures (OCAP) for the Newlands Project. The judge maintained continuing jurisdiction in the case and it has since been transferred to the U.S. District Court in Reno, Nevada for further consideration.

6. Truckee-Carson Irrigation District v. United States. No. 512-7 United States Claims Court. This was an action filed by TCID to recover damages from the United States, allegedly due because TCID cut back on water releases on the Newlands Project to benefit Pyramid Lake and, consequently, was required to forego winter power production.

Proposed Settlement Terms

The major points in the proposed legislation are summarized below:

1. Settles a number of outstanding lawsuits other than those relating to pollution control (Section 107).

2. Fish propagation program (Section 106) for Lahontan Cutthroat Trout and cui-ui is funded by a settlement fund (Section 108). The fish propagation program provides for flexible, cost-effective actions to improve the habitat for natural spawning. Settlement funds would be financed by a one-time $21 million appropriation and an $8 million contribution by the State of Nevada in an interest accruing trust fund account.

3. Minimum Pyramid Lake level of 3,794 feet (10-year rolling average) and 3,786 feet (2-year minimum) (Section 104). (The present lake level is approximately 3,811 feet.)

4. A "menu approach" for providing additional water to Pyramid Lake to meet lake level and fish flow criteria (Section 105). The menu is financed with the settlement fund. Included is a process for executing an operating agreement for Truckee River reservoirs.

5. Truckee River diversions criteria for TCID will be negotiated by Interior and TCID and agreed to by the State of Nevada and the Tribe.

In addition, if an operating criteria agreement is implemented, Interior would waive $1.5 million TCID repayment obligation and Reclamation Reform Act requirements. (Section 111)

6. Provides $10 million Tribal Trust Fund for economic development on the Pyramid Lake Indian Reservation (Section 109).

7. If Pyramid Lake elevation criteria are not met, damages will be paid to the Tribe by the Federal Government (Section 110). Maximum damages in any given year are $7 million.

8. Ratifies California-Nevada Compact (approved by Governors Reagan and Laxalt in 1970 and 1971)(TitleII).

Note that both the Truckee River reservoir operating agreement and the TCID operating criteria (OCAP) are subject to multi-lateral agreements. Both have time limits of 12 months for negotiating the agreements (Section 107(6)(1)); however, a 6-month extension is possible if the Secretary and the State of Nevada agree. Therefore, the whole settlement package is conditional, subject to resolution of these two issues.

Financing

The legislation as proposed has the following fiscal impacts:

- Federal contributions of $21 million to settlement fund (Section 108) and $10 million to Tribal trust fund (Section 109).
- State of Nevada contributes $8 million to settlement fund (Section 108).

- Federal Government forgives $1.5 million in debts for TCID (Section 111).
- Federal Government assumes liability (if any) for Pyramid Lake elevation damages.

Lake Level Analysis. The Bureau of Reclamation has conducted a hydrologic modeling analysis of the probabilities of violations of the Pyramid Lake elevation criteria under differing assumptions. The key analytical question is the probability of a prolonged drought and its effect on diversions from the Truckee River system and the resultant inflows into Pyramid Lake. The basic findings of the Bureau of Reclamation are:

- Based upon the historic 80-year hydrologic record, no violations of the lake level criteria (over 1901-1980) would occur, assuming some limitation on Newlands Project diversions.

- Even under the most severe drought conditions, it is not likely [redacted] that any violations of the lake level criteria would occur prior to the year 2000.

It should be noted that damages payments are not the Secretary's only remedy to violations of the Pyramid Lake elevation criteria. In fact, the agreement is designed so that it is more cost effective for the Secretary to take actions that will put water into the lake and not pay damages. Under Section 105, the Secretary has a menu of possible measures that can be taken to decrease diversions from the Truckee River and thereby increase inflows into Pyramid Lake.

California-Nevada Interstate Water Compact

Title II of this legislation ratifies the California-Nevada Interstate Water Compact. We believe that ratification of the Compact in conjunction with passage of Title I is timely and will serve several important purposes. Ratification of the Compact will assist in the elimination of many of the sources of present and future water related controversies between the two States and permit the orderly use of the limited water supplies within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins.

The Compact is the result of over 13 years of negotiations between the States of Nevada and California under the authority of P.L. 84-353. It was approved by the two State legislatures and signed by then Governors Reagan and Laxalt in 1970 and 1971. As Members of this Committee are no doubt aware, this Compact has been before the Congress in the past and the Department unfortunately was forced to oppose its ratification because of its failure to adequately address the claims of the Pyramid Lake Paiute Tribe. The situation now is entirely different. In this instance, the Compact comes to the Congress in the context of an overall settlement of the claims associated with the Truckee River and Pyramid Lake.

The Compact ratification issue is still not without some controversy. The Walker River Paiute Tribe has voiced its opposition to the Compact's ratification on the ground that it may bar or limit the Tribe's claims to undecreed water in the Walker River Basin. We believe, however, that Article XVIII of the Compact preserves the Tribe's right to assert its claims under either Federal or State law, and that all other provisions of the Compact should be construed in harmony with that Article.

In conclusion, therefore, we urge the ratification of the California-Nevada Interstate Water Compact in the context of this comprehensive settlement.

Senator WALLOP. Thank you.

Bob, before I ask any questions, I would note the presence of Senator Hecht and would see if he has an opening statement or any questions.

STATEMENT OF HON. CHIC HECHT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator HECHT. Thank you, Mr. Chairman.

They called me frantically to open up the Senate at 9 o'clock this morning, so that was the reason for my lateness.

I apologize.

I appreciate your giving this subcommittee the opportunity to hold hearings on this bill, the Pyramid Lake Paiute and Truckee River Settlement Act of 1985.

This bill is intended to make it possible to bring to an end approximately 75 years of litigation and controversy in northwestern Nevada. This issue is very important to Nevada. It is also very complex and sensitive.

After 4 years of intensive, difficult, and politically charged negotiations, the various parties have essentially reached a settlement.

This committee will shortly be hearing some of the details of that settlement. The basic issue here is water, particularly the water of the Truckee and Carson Rivers.

Approximately 15 lawsuits, past and present, have been before the courts on this issue since 1909.

At stake in this settlement legislation is the future economic growth of the booming Reno-Sparks area of Nevada; the continued survival and hopefully the rapid recovery of two threatened and endangered species of fish that are closely associated with the culture of the Pyramid Lake Paiute Tribe; the future of the Nation's oldest reclamation project, the Newlands project; the protection of important outdoor recreational water resources for the people of Nevada and the Nation; and the allocation of the as yet unallocated waters of the Carson, Truckee, and Walker Rivers and Lake Tahoe between California and Nevada through ratification of the California-Nevada compact, which comprises title II of this bill.

When Senator Laxalt and I introduced this bill in late July, and Congressmen Vucanovich and Reid introduced its companion measure, H.R. 3213 in the House, we knew we were not presenting the Congress with a final product.

For instance, by late August, the principal party then further refined the language of the bill we introduced in July and strengthened their agreement on a number of issues. These changes enjoy the Nevada delegation's complete support.

I am now convinced that all that can be done at the local level has been done. It is now time for the Congress to act, to take S. 1158 and use it as a vehicle to define and resolve any remaining issues, and finally to allow us, in Nevada, to put 75 years of conflict behind us, so that all parties can concentrate on building for the future.

With a little help from the Congress, the Indian and non-Indian people of Nevada will be able to take the necessary steps to protect the culture and fishery resources of the Pyramid Lake Tribe, enable Reno-Sparks to grow and further contribute to the national economy, allow the Newlands project farmers to concentrate on cultivating their crops rather than spending their resources in the courts, and equitably allocate the as yet unallocated waters of the Carson, Truckee, and Walker River systems and Lake Tahoe between California and Nevada.

Mr. Chairman, I appreciate the opportunity to let the subcommittee know how important this bill is to all the people of Nevada, Indian and non-Indian alike.

Thank you very much.

Senator WALLOP. Thank you, Chic.

Did you have any questions that you wished to address to Secretary Broadbent?

Senator HECHT. No. I heard his ending and I liked it very much that he's trying to work it out, and the fact that we all know it is not fixed in concrete.

I certainly congratuate him on a tremendous amount of effort.

I would say, since you have been in Washington, Mr. Broadbent, this has probably taken the lion's share of your time, is that correct?

Mr. BROADBENT. I've spent a lot of time on it.

Senator HECHT. You've always been a hard worker. I'll bet the hours on this have been the biggest part of any project that you've had since you've been in Washington.

Mr. BROADBENT. I've spent a lot of time, Senator.

Senator HECHT. Keep going. We've got to work this one out.

Mr. BROADBENT. We'd like to wrap it up.

Senator HECHT. What's that?

Mr. BROADBENT. We'd like to wrap it up.

Senator HECHT. I'm sure you will. Just keep working on it.

Thank you, Mr. Chairman.

Senator WALLOP. Mr. Secretary, is it your understanding that the negotiating parties had an agreement at the very least in principle in July, just prior to the introduction of this legislation?

Mr. BROADBENT. Yes.

We were in a negotiating session, actually, in Reno, when we reached an agreement in principle. Then everybody went back to finalize it. In August, the tribe came back with some suggested changes. All of those changes were adopted—which are not in the bill, incidentally—with the exception of two. Those two are two that I spoke about in the hearing today that I think can be resolved.

So we felt that—at least with the August memorandum and, again, in the September memorandum—we were in agreement. At the testimony that was heard in the first part of October, the tribe indicated that they felt the settlement fund was not large enough. That is the first time we had felt that that was an issue that had not been agreed to.

I think all of us would agree that we would like to have a lot more money to do a lot of things. But we think the settlement fund is adequate to do the job.

Senator WALLOP. The reason I ask is because the Pyramid Lake Paiute Tribe has submitted testimony for this hearing rather than appearing in person. The testimony they have submitted indicates they may not agree with S. 1558, as drafted.

Mr. **Broadbent.** I think that is true.

As I say, I think we agreed to a number of changes, which have already been agreed to. There were some 19 changes agreed to, that would make it more. And then the other two changes that they brought up which were rather pointed were the two changes on the compact and title I, which impressed them, I guess, and then the other one was the lake-bottom issue. I think those have been, and can be, easily resolved.

The only other issue that I know of that is outstanding is the issue that is the size of the settlement fund.

Senator **Wallop.** The tribe, through the testimony of their attorney, Mr. Thorp, testified before the Select Indian Affairs Committee on October 2, and indicated that the Federal contribution of $21 million would be completely inadequate to carry out the terms of the settlement.

I have two questions.

In your opinion, will the $21 million carry out the terms proposed in S. 1558? And what would the improvements at Marble Bluff Dam and Fishway and the Hunting National Fish Hatchery facilities cost?

Mr. **Broadbent.** Well, first of all, the Federal commitment is $21 million. The State is also putting up $8 million. So it is actually a $29 million settlement fund.

We think it is adequate to do what we would want to do.

Now it probably will not replace Marble Bluff Fishway. The Indians themselves question whether you really want to replace that fishway. I think the Fish and Wildlife Service would probably tell you they think it is necessary. But the Indians themselves in our negotiated sessions were more interested in protecting the river below Derby Dam by lowering the temperature, by putting in some shade trees, by doing some other modifications to the river system which they felt would do more to protect their cui-ui fish than maybe the Marble Bluff Dam and Fishway would.

I think it is anybody's professional guess. But at least the tribal interests in July and again in the August and September letters told us that they felt the $29 million was adequate. The October testimony was the first time we heard that they felt it was not adequate.

And, as I said, the Lahontan National Fish Hatchery facilities cost—there is already a fish hatchery there. It may need some improvements. The tribe says it needs some improvements. The Fish and Wildlife Service says it needs some improvements. And then to improve the habitat along the river, we know that needs to be done. And some work needs to be done on the fishway, and we think that $29 million will be adequate in terms of today's dollars and today's budget to do that kind of job.

Senator **Wallop.** It appears that one of the key provisions upon which the whole settlement bill is predicated is the obligation on the part of the Secretary of the Interior to provide a minimum lake level for Pyramid Lake for the protection, preservation, and enhancement of the cui-ui and the Lahontan trout.

Is the basis of the obligation to provide the minimum water levels in satisfaction of Indian claims of a reserve water right for the fish or in satisfaction of Federal obligations under the Endangered Species Act not to jeopardize threatened or endangered species?

Mr. **Broadbent**. Well, the issue of the reserved water rights for the fish was raised in Orr Ditch, and it was raised again in appeal of Orr Ditch, which was the Supreme Court decree. At that time, as I recall, they said there was no reserved water rights for the fish.

I think certainly that is an interest of the Pyramid Lake Paiutes, to make sure that they have adequate water into this system so that they can maintain Pyramid Lake. So the level of Pyramid Lake, I guess you would say, is there to maintain what the Indian interests think or feel is their reserved water right on the river.

Also, it is a lake level that we think would enhance the opportunity for the survival of the cui-ui and the Lahontan cutthroat.

Senator **Wallop**. Well, it brings out the problem that I continue to have with Western water rights and arguments whether between States or between States and tribes or other things, and people beginning to use the Endangered Species Act as a tool to acquire water that their rights do not give them.

We in Wyoming have noticed that with both Colorado and Nebraska. It would appear to me that this is not a dissimilar situation.

Mr. **Broadbent**. Not at all dissimilar.

In fact, those same allegations have been made in this river system.

Senator **Wallop**. Is the menu of options for the Interior, in your opinion, satisfactory for them to meet minimum lake levels?

Mr. **Broadbent**. Yes, sir.

We've done a lot of modeling of the river. We have looked at the historic 80-year record on the river system. The level of Pyramid Lake is about 3,811 or 3,812 right now. It is substantially higher than the levels that are mandated under the act.

All of our modeling is based on historic record, and then we have done some modeling based on extreme dry periods, say a 6- or 7-year extremely dry period. It indicates to us that the menus that are there would offer us the opportunity, along with good management of TCID and the management options we would have by reaching agreement on the management of the Truckee River, and would give us the tools we need to be able to maintain that lake level without significant costs to the Federal Government.

Senator **Wallop**. What about to the irrigator? Is it likely that that menu of options in low-water years means the irrigator's rights will have to be condemned?

Mr. **Broadbent**. No. The irrigators have a right that is given to them by the Supreme Court. The only time they can be hurt is when everybody on the river suffers, when there is no water in the river. Their rights are predominant. The only time they would be hurt is when there is no water in the river, period.

Senator **Wallop**. Do you know if in this instance, at least, the obligations to the endangered species are shared obligations amongst all of the participants in the compact?

Mr. Broadbent. I think maybe Dr. Hester might disagree with me a little bit, but I am going to give you my opinion and then maybe I will let him give his opinion.

My opinion is that the water rights for the farmers are over and above the water rights under section 7 of the Endangered Species Act. I think maybe the Fish and Wildlife Service may have a different opinion. That has not been resolved as yet. These are litigated rights. They were litigated and granted by the Supreme Court. They are preference rights.

Dr. Hester. Senator, I am not sure I can answer what I see is a legal question here. But I do look at this, overall, as being beneficial to the fish in that the conditions of this legislation would improve the likelihood of recovery of the cui-ui fish.

Senator Wallop. Well, that's exactly the answer to the question. The question really goes back to whether the irrigators' rights will have to be condemned in low-water years, and the answer, as I understood the Secretary to give it, was that they would be the last. My question to follow that was would it then be a fair characterization of this proposed compact that the fish requirements are shared amongst all parties or are they in the last resort the obligation of the irrigators.

Mr. Broadbent. There is nothing in the bill that would allow us to condemn any water rights. The only water rights we can obtain under this act are from willing buyers or willing sellers.

We think that in extreme dry years we can meet the requirements of the lake level——

Senator Wallop. Through purchase or something.

Mr. Broadbent [continuing]. Through purchase or lease really. We are talking really about probably leasing water.

During a dry year, if you only have 40 percent of your water for a 100-acre patch, you may not want to do anything with it anyway. You would be better off to let that water go and lease it to somebody and let him use it.

Senator Wallop. I have one last question.

In your opinion, if this bill were to be enacted into law and minimum lake levels delivered to Pyramid Lake, is it likely that the endangered fish will propagate and prosper through natural spawning, or could the fishery be adequately enhanced through a fish hatchery and artificial propagation.

Mr. Broadbent. I think maybe Dr. Hester answered that question. Maybe I will let him answer that again, and that is, it is his opinion that the opportunity for the fish would be enhanced by this legislation.

Senator Wallop. But enhanced to do what? To propagate naturally or to be propagated?

Dr. Hester. There is an increased likelihood of it propagating naturally, yes.

Mr. Broadbent. Let me tell you that there is a feeling among many people that the cui-ui, without some legislation like this or some other legislation, probably is not going to survive.

As I understand this fish, it lives 20-some-odd years. There has only been 1 year documented of successful spawning of this fish, and that was the 1969 year. We believe there was successful spawning in 1980, 1982, 1983, 1984, and maybe 1985, but they do not return up river for 6 or 7 years, something like that.

Dr. **Hester**. That is correct.

Mr. **Broadbent**. They have not been able to document it yet.

So there is a strong feeling among a lot of people that without a bill like this, the cui-ui is not going to survive. That is why we couch it by saying we are enhancing the opportunity for the survival of the fish because without it there are a lot of people who think it may not survive at all. That has to do with the fact that when a fish goes below 100,000 or something like that, then the chances are it will not survive.

Senator **Wallop**. Thank you very much.

If there are other questions from members of the committee—Chic, do you have one?

Senator **Hecht**. No. But just to continue, I think the way they're working it out is by negotiations. As Dr. Kissinger would say, "we will negotiate."

We just have to work out some type of settlement because, if you will excuse this, the attorneys' fees are horrendous amongst the farmers down there, and they can no longer continue this exhorbitant cost. After 75 years, I think it's time to work out something.

So I commend Secretary Broadbent and the way he's handling it, in trying to get all of the parties into negotiations.

I certainly hope you'll continue and get this thing worked out.

Senator **Wallop**. Thank you very much, Mr. Secretary and Dr. Hester.

Mr. **Broadbent**. Thank you, Mr. Chairman.

We are certainly available to the committee at any time.

Senator **Wallop**. The next witness is Director Roland Westergard of the Department of Conservation and Natural Resources of the State of Nevada.

STATEMENT OF ROLAND D. WESTERGARD, DIRECTOR, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, STATE OF NEVADA, ACCOMPANIED BY JOHN W. HOFFMAN, ESQ., SPECIAL DEPUTY ATTORNEY GENERAL, STATE OF NEVADA

Mr. **Westergard**. Mr. Chairman and Senator Hecht, as you indicated, I am Roland D. Westergard, director of Nevada's Department of Conservation and Natural Resources.

With me today is Jack Hoffman, who is a practicing attorney in Reno, NV, and a special deputy attorney general for the State of Nevada. His firm and Jack personally have been involved in the various litigation and negotiations that we heard described here earlier.

Mr. Chairman, I have submitted a detailed written statement for the record, and with your indulgence, I would request that it be accepted as part of the record.

Senator **Wallop**. It will be included in the record in its entirety. Please proceed as you wish.

Mr. **Westergard**. Thank you, Mr. Chairman.

I think, Mr. Chairman, you very succinctly in your opening statement addressed the issues and the essential elements of this legislation. That, combined with Senator Hecht's comments and Bob

Broadbent's explanation, certainly I think does not warrant me taking much more time on the details.

With your permission, Mr. Chairman, I'd like to address a couple of the comments that you made during your questioning of Mr. Broadbent, and I would hope, sir, that if I could clarify any of these points as I go along, you would give me that opportunity.

I am offering to be available for questions as we go along, if that's appropriate.

You mentioned, Mr. Chairman, the potential impacts of the Endangered Species Act. I think those of us in the West, including your associates in Wyoming, view the Endangered Species Act today as as much a threat as we did the potential impacts of the reserved rights doctrine several years ago. I think the whooping crane issue, that you are familiar with, and perhaps the endangered species issue, which surfaced very late in some comprehensive litigation on the Truckee River stream system would confirm that fear.

I'd also like to indicate to you, Mr. Chairman, that, as one of the participants in these detailed negotiations, we, too, at least from the State of Nevada's perspective, understood as late as August that we had an agreement on this proposed settlement with all the parties, including the Indian tribe. We were somewhat surprised, to say the least, that their objection surfaced very late, some of them as recently as the day before the previously scheduled hearings before another committee of the U.S. Senate.

Mr. Chairman, you referred to this legislation as being unusual. I certainly concur with you that it is.

Perhaps it's unusual because of an unusual set of circumstances that surround the litigation and the settlement discussions that have been described.

Specifically, the Truckee River stream system and Stampede Dam and the water supplies of that stream system as well as potential development on other stream systems in western Nevada were the subject of a reclamation act called the Washoe project, which was authorized by the U.S. Congress.

Specifically, Stampede Dam was constructed as a part of that authorized Washoe Project Act.

Interestingly enough, although it was completed several years ago, there is, to date, absolutely no use of that water out of Stampede Reservoir for one of the very principal reasons that the dam was constructed, and that is municipal and industrial purposes in the Reno-Sparks area.

Also, there has been no repayment of construction costs, since the project there has been devoted entirely to flood control and protection of the endangered species, that you have heard described, on the lower Truckee River stream system.

This is a result, as you alluded to, Mr. Chairman, of the intense litigation involving Stampede Dam, initially, the local conservancy district, the utility, Sierra Pacific Power Co., and the State of Nevada, frankly, out of sheer frustration, filed a mandamus declaratory judgment action in the Federal court system to require the Secretary of the Interior to proceed to enter contracts with the local district so that water from that reservoir could be used for the intended purposes, including the fishery on the lower Truckee

River stream system, which we acknowledge was a potential and authorized use of the water supplies out of Stampede Reservoir.

After the litigation was filed, the Endangered Species Act was passed. At a late date, that was injected into this comprehensive litigation. As a result of that, there was a Federal district court decision in the Federal District Court of Nevada, which was reaffirmed by the Ninth Circuit Court of Appeals, and by virtue of certiorari being denied by the U.S. Supreme Court is resolved in favor of the endangered species.

The sum and substance of that decision is that the yield of Stampede Reservoir shall be devoted to the preservation of the endangered species unless and until such time as the species are delisted.

This puts us obviously in an indeterminate state as far as the water supply for the future of the western Nevada area. We think these are unusual circumstances that warrant an unusual resolution.

Specifically, if enacted, this legislation would provide a mechanism through a subsequent agreement for a coordinated operation and yield of the reservoirs on the Truckee and Carson River stream systems.

Hopefully, this would enable, as I say, a part of the yield of Stampede to be devoted to M&I purposes in Reno and Sparks. That could be accomplished under this legislation.

Similarly, as you are aware, Mr. Chairman, and as some of your questions have addressed, the obligation of the U.S. Government, and as Bob Broadbent said, of the State under that is willingness to participate financially in the form of an $8 million bond issue.

Interestingly enough, as I have said, there has been no repayment of any of the construction costs. It's our understanding, and I can't represent to you, sir, that I have personally computed these figures, but it's been represented to us by the people who would be, in effect, responsible for the entering into the contracts and for repayment of those construction costs that as much as 50 percent of the costs of that facility would be reimbursed if the formula that's set forth in the legislation before you were implemented.

We're told that that could total as much as $20 to $22 million. I think that's extremely significant to you and other people in the Congress. When you compare that with the $21 million obligation for improvements in the area plus the $10 million trust fund, plus the $8 million that the State of Nevada would be contributing, we think, in fact, this could be considered an offset to the costs to implement this legislation, because in the absence of this legislation, there will be no repayment of those construction costs.

Bob Broadbent has indicated, and I think it's important for you and the members to be reminded, as we often are reminded ourselves, by Mother Nature of the circumstances in western Nevada, which is a critically water-short area. We find, Mr. Chairman, not only are the municipal needs in competition with the agricultural users, and the agricultural users in competition with the recreation users, but all of them are in competition with each other.

As Bob Broadbent very succinctly put it, we have an endangered species listed on the Pyramid Lake Reservation, in Pyramid Lake and on the lower Truckee River, which is the terminus of the Truckee River stream system. Similarly, we have the ever important, as a matter of fact critically important to western Nevada, recreational areas at Lahontan Dam and the Stillwater and Carson Lake patches on the terminus of the Carson River stream system.

So we have the unusual, if not unique, set of circumstances where we have not recreation and wildlife and endangered species competing with further potential development for human needs or agriculture or whatever, but, in fact, competing with themselves.

I think that really puts into perspective the seriousness of this entire situation.

I think we also have the unique or unusual opportunity through this legislation to address another question that you've already raised, Mr. Chairman. I don't think it has to become a matter of endangered species or application of the reservation doctrine.

We think, from the State's perspective, very candidly, that the court system has been supportive of our position. There have been several court decisions that have, in fact, found that the reserved rights doctrine could not be applied against the agricultural users. They found res judicata of the decreed that was entered years ago.

So we're not unduly threatened by these continued advocacies of the reserved rights doctrine on the Truckee River system. But the threat is there. We're potentially faced with continuing litigation.

Again, to use your words, we have the unusual opportunity to set that aside through this proposed legislation.

I'd like to briefly comment on the interstate compact.

I think it's important, again, for everyone to recognize that this isn't a recent development. As early as the 1920's, 1930's, 1940's, disagreements surfaced between the States of California and Nevada as to allocations and use of the water supplies of the Truckee, Carson, and Walker Rivers in Lake Tahoe, all interstate bodies of water. It was recognized that it was absolutely necessary to proceed with an agreement between the two States as to how much of that water was going to be made available for each of the States.

The U.S. Congress and the two State legislatures in 1955—in 1955, mind you—authorized the implementation of an interstate compact commission. That commission negotiated over a period of 14 years, until 1969, when the Nevada Legislature ratified the interstate compact, the basis of which was to provide an equitable apportionment of those limited water supplies between the two States.

In 1970, the California Legislature amended slightly the document that had been approved by Nevada.

In 1971, our legislature came back, reratified, so that the language would be identical with that approved by California.

Since 1971, the two States of California and Nevada have operated under a so-called gentleman's agreement, under the terms of that compact. It's been effective. There have been no problems with it. It has not been considered by the U.S. Congress, very candidly because of concerns that this legislation before you addresses.

We think it's imperative that we have an allocation of water between the two States so that both of us, Nevada and California, will know how much water we have to deal with. We think it's imperative that that be determined so that the provisions of title I of the bill before you will have some meaning and so that we can then, through that avenue, resolve the issues internally within Nevada and once and for all set aside the interstate potential conflict in the absence of an interstate compact.

With that, Mr. Chairman, on behalf of the State of Nevada, I urge you and your colleagues to favorably consider the legislation before you.

[The prepared statement of Mr. Westergard follows:]

TESTIMONY OF ROLAND D. WESTERGARD, DIRECTOR, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES OF THE STATE OF NEVADA

BEFORE THE

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION

REGARDING

S. 1558 - A BILL TO SETTLE CERTAIN CLAIMS AFFECTING THE PYRAMID LAKE PAIUTE INDIAN TRIBE OF NEVADA AND FOR OTHER PURPOSES

WASHINGTON, D. C.

OCTOBER 21, 1985

Mr. Chairman and Members of the Committee: My name is Roland D. Westergard. I am Director of the Department of Conservation and Natural Resources for the State of Nevada. My department has jurisdiction over lands and waters within the State of Nevada. I have responsibility for the conduct of pending litigations involving the waters of Lake Tahoe and the Truckee, Carson and Walker Rivers in Nevada, which litigations would be settled by this legislation. I have also been delegated the authority by the Nevada Legislature to engage in settlement negotiations of such litigation and to oversee the expenditure of $8 million in State funds to be contributed as Nevada's share toward such settlement. The remaining funds are requested to be appropriated by this legislation.

The legislation before you for consideration is the result of long, tedious and often tenuous discussions and negotiations between parties that for years have been adversaries in the critical issues of allocation and distribution of waters of the Truckee, Carson and Walker Rivers and Lake Tahoe.

It is important to recognize that the most recent negotiations and discussions resulting in this bill followed repeated attempts over a period of years to arrive at a resolution and settlement through similar discussions and negotiations. Each time the parties reached a certain point of impasse, negotiations were terminated and concluded. It was repeatedly recognized by all the parties as representatives of the people of the States of Nevada and California, of various local communities and of the public in general, that it was imperative and a distinct obligation to, once again, attempt to resolve not only interstate existing and potential conflicts, but also intrastate existing and potential conflicts, so as to provide for a lasting and equitable resolution of the issues involving the rights to these waters.

Thus the significance of the proposed resolution of these issues reflected in the legislation before you cannot be over-emphasized.

Section 101 of the bill recognizes the purposes for which the bill was introduced, including the protection of the Cui-ui and Lahontan Cutthroat Trout in the lower Truckee River and at Pyramid Lake, the supplying of municipal and industrial water for the Cities of Reno and Sparks and Washoe County, Nevada, and the dismissal of numerous lawsuits that are now pending.

Section 102 defines many of the terms that are used in the Act.

Section 103 protects existing court decrees; however, the bill recognizes that it will be necessary to modify Carson-Truckee Water Conservancy District v. Clark, 741 F.2d 257 (9th Cir., 1984) to provide municipal and industrial water for the Reno-Sparks area. Other existing decrees, many of which are enumerated in Section 103, will not be modified. The cases specifically identified in Subsection 103(a) are extremely important adjudications affecting the rights of numerous water users. The draftsmen did not intend that any provision would be deemed to override those important court decisions.

However, there is provision at Subsection 103(b) for the possibility that following the appropriate court procedures, where all individual rights can be protected, those decrees may be modified by the parties to those decrees.

Section 104 provides for the maintenance of a lake level for Pyramid Lake based on a ten year moving average. The lake level to be maintained is approximately 17 feet below the existing elevation of the lake. The average lake level to be maintained is the result of studies and negotiations conducted by the Pyramid Lake Tribe and the United States. The lake level maintenance was a specific objective of the United States and the Pyramid Lake Tribe in past litigation. However, those efforts proved unsuccessful in court. One of the trade-offs that benefit the Pyramid Lake Reservation and the fishery is the establishment of a duty on behalf of the Secretary of Interior to maintain the lake level set forth in Section 104 of the bill. The two year moving average requirement was also worked out between the Pyramid Lake Tribe and the Department of the Interior. Its objective is to avoid wide fluctuations in the lake in a way that might prove detrimental to the fishery habitat.

Section 105 sets forth the water management plan to be implemented.

Subsection 105(a) empowers the Secretary to enter into agreements and take actions that may not be otherwise specifically authorized by law. As more fully set forth in later sections of the legislation, many comprehensive agreements will be required as part of the resolution of the critical issues existing between the parties. Before those negotiations can commence on a meaningful basis, the authorities of the Secretary of Interior need to be specifically set forth as is accomplished in this section of the bill.

This subsection provides authority to the Secretary to enter into an agreement with the Truckee-Carson Irrigation District for rehabilitation and betterment of the Newlands Project including the lining of certain canals. Such rehabilitation and betterment project must include a component for the Stillwater Wildlife Management area and other wetlands areas adjacent to the Newlands Project to mitigate fully the effects of such rehabilitation and betterment. It is recognized that the wetlands areas have been reduced drastically during the last century and that mitigation is critical to enable these areas to continue as viable and protected wetlands.

Subsection 105(b) is particularly important because it authorizes the Secretary to enter into a contract for the sale of water from Stampede Reservoir for municipal and industrial uses in Reno, Sparks and Washoe County, Nevada. Without the specific authorization, the Secretary would be precluded from such sale because of the status of decided litigation.

Subsections 105(c), (d) and (e) provide for the execution of a contract by the Secretary for the delivery of Stampede water in amounts and at times to be agreed upon by the Secretary, the Tribe, Sierra Pacific Power Company and the Carson-Truckee Water Conservancy District. Such agreements would also necessarily include provisions to protect the interests of the State of California in the yield from Stampede Reservoir. It is contemplated that the M & I use of Stampede would be phased in over several years and all of the contracted water would not be available immediately for M & I purposes. This will enable the Secretary to assure the protection of the Cui-ui and Lahontan Cutthroat Trout at Pyramid Lake while other fish protection programs are being established under this legislation.

Subsection 105(f) provides for the payment to the United States of the reimbursable portion under the Washoe Project Act (43 USC 614). The reclamation fund has not received any reimbursement from the Washoe Project construction, but under this subsection the M & I uses would generate reimbursement and replenishment of the reclamation fund for the project.

Subsection 105(g) authorizes the Secretary to negotiate with interested parties for storage of privately owned water in Stampede Reservoir to the extent storage is available. This flexibility may prove very important in the formulation of an overall management plan.

Section 105 provides further for reimbursement of lost revenues, including property taxes, as the result of any land or waters that are purchased by the United States and taken out of production to be used to enhance the Pyramid Lake fishery. One intention of the bill is to avoid financial hardships as a result of solving the difficult water questions.

Section 105 also authorizes the Secretary to file applications with the Nevada State Engineer to change points of diversion, place, means, manner or purpose of use of any water rights acquired by the Secretary for the benefit of the Pyramid Lake fishery. The intent of this section is to enable the Secretary to transfer purchased water rights in order to carry out the purposes of the act. Following State procedures will protect all parties interested in any proposed change.

Subsection 106(a) obligates the Secretary to formulate and commence a fish enhancement program for the benefit of the Cui-ui and Lahontan Cutthroat. This section directs the Secretary to undertake a comprehensive program of a broader and more specific nature than would be suggested by the general provisions of the Endangered Species Act. It is an affirmative program designed to protect and preserve the Cui-ui and the Lahontan Cutthroat Trout in ways that would be unavailable to the Secretary in the absence of this legislation. This comprehensive program, made possible by the agreements of the parties, exceeds the present ability of the Secretary of Interior to protect and enhance the fishery under existing court decrees and other constraints.

Subsection 106(b) sets forth various programs which the Secretary may select to enhance the Pyramid Lake fish resources. It is anticipated that the Secretary will choose those programs which will enhance the fishery in the most cost effective manner. The contribution of $8 million by the State of Nevada, as set forth in Section 108, will be available for these newly authorized programs.

Section 107 sets forth the effective dates of various provisions of the act.

Subsection 107(a) states several conditions that must be met to protect the interests of the parties. Among the features of this subsection is a requirement that the Pyramid Lake Tribe will receive a permit from Nevada for the use of all unappropriated waters of the Truckee River, which is significant for the maintenance of the lake level. A state permit is important to the Tribe since its claim for a Winters reserved right was rejected by the United States Supreme Court in Nevada vs. United States, 103 S. Ct. 2906 (1983). Sierra Pacific Power Company and Washoe County would be required, as a condition to the effectiveness of this legislation, to withdraw applications which they now have pending before the Nevada State Engineer, and which are senior to the Tribe's application. The Sierra Pacific and County applications, if granted, would significantly impact the level of Pyramid Lake, contrary to the aspirations of the Pyramid Lake Tribe and the United States. The effectiveness of the legislation would not be complete until Nevada agrees to the contribution of $8 million as set forth in Subsection 108(b)(1) of the bill. Because the expenditure of sums would be one of the last acts accomplished in the overall settlement, Nevada would be bound to contribute those sums by a duly enforceable agreement, even if the actual expenditure of those funds occurs after the period available for the negotiation of necessary agreements. The draftsmen recognized that the initiation of a state bond issue requires time to complete and it would be unrealistic for those efforts to go forward until such time as the basic agreements were in hand.

The effective date of the legislation is also dependent on the dismissal of a number of pending litigations in the State of Nevada and in the State of California. These litigations have consumed countless public and private dollars and because of the limited quantity of water available to resolve these disputes it is doubtful that this litigation could ever be resolved by settlement and compromise without the additional resources and authorities provided under this legislation.

Section 107 requires that agreements relating to operating criteria for the Newlands Project and reservoir storage must also be in place.

Subsection 107(b)(1) provides a one year period to meet all of the necessary conditions. This one year limitation is designed to promote the present atmosphere of negotiation and compromise, bring the parties together before other circumstances or constraints make negotiations more difficult, and to avoid the commitment of state and federal funds for an unduly lengthy period of time. There is a further proviso in Subsection 107(b)(2) that would allow the Secretary of Interior and the Director of the Nevada Department of Conservation and Natural Resources to extend the one year limitation period for up to an additional six months. This additional period would only be utilized if the satisfaction of all necessary conditions is promising, if not imminent.

Section 108 provides for a settlement fund in the amount of $29 million, $8 million of which will be contributed by the State of Nevada. In 1983 the Nevada Legislature provided that as part of a negotiated settlement package the State is authorized to issue general obligation bonds for not more than $8 million, as the State's share of the cost associated with the project identified in the within bill. Nevada is thereby responding to the federal administration's insistence upon cost sharing by non-federal entities.

Subsection 108(d) provides that funds expended from the settlement fund shall be deemed to be one-half from the amount contributed by the State of Nevada and one-half contributed by the federal government until a total of $16 million is expended. This provision was necessary to insure that the proper contributing party is credited in the event the funds are not fully expended and returned to the State or the federal government as provided in later sections.

Section 109 provides for the establishment of a trust fund in the amount of $10 million for the benefit of the Pyramid Lake Paiute Tribe. This is a major benefit to the Tribe.

Section 110 provides for the payment of damages to the Tribe in the event the lake levels specified in Section 104 are not maintained.

Subsection 110(b)(1) provides that the United States shall have no right to recover any portion of such damages paid to the Tribe from any person or entity as this is the Secretary's sole responsibility.

Subsection 110(b)(2) places a ceiling on damages. This provision is a matter between the Tribe and the Department of the Interior.

Subsection 111(a) provides that obligations presently owing to the United States by the Truckee-Carson Irrigation District for irrigation construction costs are cancelled.

Subsection 111(b) provides that project operating criteria shall be agreed upon by the Secretary and the Truckee-Carson Irrigation District, subject to the approval of the Tribe and the State of Nevada. It is important to Nevada to insure that operating criteria are adopted which will sufficiently protect recreation uses at Lahontan Reservoir, the wetland areas in Lahontan Valley and uses of water upstream from Lahontan Reservoir.

Lahontan Reservoir provides one of the outstanding recreational use areas in the State of Nevada. The State has invested more than $5 million in development of recreational facilities at Lahontan. This recreational area draws an average of 550,000 visitors each year. In addition, Nevada spends $337,000 annually in operating costs for this facility.

There are very significant fish and wildlife resources associated with the Newlands Reclamation Project. These resources include 22,000 surface acres of fishable waters throughout Lahontan Valley with Lahontan Reservoir being the most important fishery within the project area. These fishery resources support about 100,000 angler days of fisherman use annually and account for a harvest of nearly 250,000 game fish.

Lahontan Valley also contains the most important wetlands in Nevada. During normal water years the valley has maintained approximately 47,000 acres of wetland habitat which support a broad array of wetland associated wildlife. Most noteworthy is the fact that 75% of Nevada's fall duck population depends upon these wetlands, as does 65% of the state's tundra swan population and 50% of the state's Canada goose population. Additionally, one-third of the Pacific Flyway population of canvasback ducks stage at Stillwater Marsh during migration periods, the largest of the top three breeding populations of white-faced ibis in the United States occurs at Carson Lake, the Anaho Island white pelican colony uses Lahontan Valley wetlands extensively for feeding grounds, and about one-quarter of the state's wintering bald eagle population use these wetland areas. Economically, expenditures for hunting and fishing recreation within the Newlands Project area amount to $3 million annually.

With fish and wildlife values of such magnitude, the State of Nevada considers the protection of these wetlands and the maintenance of Lahontan Reservoir at acceptable water levels as critical to the state's interest. Therefore, any actions which are precipitated by this legislation must make provision for the continued maintenance of these extremely valuable natural resources.

The legislation also recognizes the importance of these wildlife values at Subsection 105(a)(3) in the event of the implementation of rehabilitation and betterment projects at the Newlands Project.

Section 113 in the original form of the bill exempts the projects undertaken pursuant to this legislation from the requirements of the National Environmental Policy act and the

Endangered Species Act. The time constraints that are necessarily included for the completion of this legislation obviously preclude the necessary time and study that environmental impact statements would require. Generally speaking, the environmental impacts of the actions that are possible under this legislation have been the subject of many studies and much litigation. The parties to these agreements are knowledgeable and sensitive to the environmental considerations that would necessarily enter into the policy judgments required to settle this case. This is particularly so in the case of the State of Nevada and the Secretary of Interior. The delays and expense involved in newly initiated environmental impact statements would be counter productive and not cost effective given the limited time and the limited resources available to affect a settlement.

The settlement contemplated by this legislation provides much greater benefits for the Cui-ui and Lahontan Cutthroat Trout, than existing conditions would permit. The funds contributed by the State of Nevada and to be appropriated by Congress would only be justified as part of the resolution of the broad issues addressed by both titles to the bill. It is critical that the agreements not be subject to prolonged collateral attack in the courts under the National Environmental Policy Act or the Endangered Species Act. It is understood that the Secretary of Interior could not be expected to approve the necessary agreements, if there was any serious question that the interests of the Cui-ui and Lahontan Cutthroat were not protected so as to make the statutory waivers beneficial. It is also necessary to provide the ESA waiver to give the Secretary a free hand not presently available because of existing litigation outcomes.

From the point of view of the State of Nevada, the singular most important feature of this legislation is the ratification of the California-Nevada Interstate Compact.

The California-Nevada Interstate Compact was formulated to provide each of the States of California and Nevada their equitable share of the interstate waters of Lake Tahoe and the Truckee, Carson and Walker River Basins. The compact is intended to resolve many of the problems rising from each state's increasing use of a limited, common water supply. These problems, which finally resulted in the determination to negotiate an interstate compact, first came to public light in the late 1940's when the State Engineers of California and Nevada faced difficulties in the administration of water rights on the Truckee, Carson and Walker River Systems. The principal water using agencies in the lower basins were protesting all new water right applications on these streams which were not supported by long-term carryover storage. These agencies took the position that there was no unappropriated water available from natural flow in excess of their rights.

In 1947-48 an attempt was made to resolve this water right problem in the Lake Tahoe Basin. An investigation of the use of water in the Lake Tahoe watershed was made jointly by the two states in 1948, and results were reported in June 1949. The report concluded that granting applications then pending or those to be filed within the then foreseeable future for use within the

Tahoe Basin for domestic purposes and recreational uses would have little, if any, effect toward depleting Lake Tahoe to the detriment of downstream users. The report went on to recommend that in regard to applications for appropriation of water for domestic and recreational use in the Lake Tahoe watershed, it should be the general policy to continue to grant such applications. Subsequently, the State Engineers of the two states issued permits for water for domestic purposes over the protests of downstream water user organizations.

During the early 1930's, the Lake Tahoe Interstate Water Conference Committee, created by the Governors of Nevada and California, was actively engaged in adjusting conflicting differences raised by the then proposed "Truckee River Agreement". The Federal Government proposed to execute this agreement with Nevada water users as a supplement to the 1915 Truckee River Decree. As a result of the Conference Committee's efforts, provisions were incorporated into the decree establishing a maximum permissible water level for Lake Tahoe of 6229.1 feet above sea level. This maximum stands today and provides protection against avoidable flooding for all the properties adjacent to the Lake.

In the Carson River Basin, from 1941 through 1949, the California State Engineer provided watermaster service on the West Carson River. In 1950, the State watermaster was replaced by a Federal watermaster acting under a preliminary adjudication and temporary restraining order filed in the case of United States v. Alpine Land and reservoir Company, et al. This case, initiated in 1925, was being pushed after many years of inactivity, in order that the water rights of the Carson River System would be adjudicated prior to construction of the Washoe Project of the U. S. Bureau of Reclamation. A final decree was entered in the Alpine case in 1980 by the federal district court for Nevada.

In the early 1950's the Walker River Irrigation District instituted engineering studies of potential water projects on the Walker River for the benefit of the District lands in Nevada. These studies revealed that the various projects would utilize nearly all of the remaining unappropriated waters of this river. This alarmed the Walker River water users in California and made them more aware than ever of the need for a settlement of the claims on the Walker River.

As a result of these water conflicts, the desirability of an interstate compact between California and Nevada was discussed by the two states. However, it was not until 1955 that legislation was obtained initiating compact negotiations. The legislation received further impetus at that time from the pending authorization of the Washoe Project, a Bureau of Reclamation Project to develop additional waters in the Truckee River and Carson River Basins.

Under similar legislation passed by the legislatures of California and Nevada in 1955, each state established a commission for the purpose of negotiating an interstate compact which would provide for the equitable distribution and use of the waters of Lake Tahoe and the Truckee, Carson and Walker River

Basins.

Federal legislation was also passed authorizing these negotiations and providing for the appointment and participation of a federal representative.

In general, provisions of the interstate compact, which were arrived at after nearly thirteen years of negotiations, reflect several basic principles. These can be summarized as follows:

1. Existing rights and beneficial uses are recognized as having the highest priority of use of available waters.

2. Waters not needed to satisfy these recognized existing rights and beneficial uses are to be divided in proportion to water needs of the two states.

3. Uses of water made under federal claims of right in each state are to be considered as benefiting the state in which the use is made and hence are to be charged against the allocation of that state.

Summary of Major Provisions of Compact

ARTICLE IV - California-Nevada Interstate Compact Commission

Article IV establishes a permanent commission, provides for the selection of members and provides for the funding for the work of the commission. The ex-officio chairman of the commission is a representative of the United States to be chosen by the President of the United States.

ARTICLE V - Lake Tahoe Basin

Upon construction and completion of an overflow weir at the source of the Truckee River above the existing structure at the outlet of the Lake, the total annual gross diversion from all sources in the Lake Tahoe Basin shall not exceed 34,000 acre-feet. The State of California is allocated 23,000 acre-feet annually and the State of Nevada is allocated 11,000 acre-feet annually for use within the Basin.

Existing transbasin diversions as of December 31, 1959, from the Lake Tahoe Basin in both states may be continued if such rights were recognized as vested rights under the laws of the state in which the diversion is made. The existing transbasin diversions recognized by the compact are: 1) In California, a diversion from Echo Lake, a tributary of the Upper Truckee River Basin, into the American River Basin in California averaging approximately 1,700 acre-feet per year. 2) A Nevada transbasin diversion is from North Creek (Third Creek), a tributary of Lake Tahoe, into Washoe Valley of 5.5 cubic feet of water per second. 3) A second Nevada transbasin diversion of a maximum of 3,000 acre-feet annually from Marlette Lake for use in Nevada.

These three transbasin diversions recognized by the Compact are historical uses and in existence on December 31, 1959. In Nevada the diversion from North Creek into Washoe Valley was determined by a District Court in Washoe County, Nevada, in 1892. The Marlette Lake diversion represents a part of the water system started in 1872 by the predecessors of the Virginia City Water Company to bring water from the Sierras to Virginia City to operate the ore reduction mills of the newly discovered silver bonanza.

ARTICLE VI - Truckee River Basin

The first allocation to Nevada is for water for use on the Pyramid Lake Indian Reservation in the amounts provided in the 1944 Truckee River Decree (Final decree in United States vs. Orr Ditch Company, et al., U. S. District Court for the District of Nevada, Equity No. A-3). This allocation recognizes the authority of the Federal Court Decree to serve an early priority (1859) of water to the Pyramid Lake Indian Reservation of some 30,000 acre-feet annually.

There is allocated to California: 1) The right to divert 10,000 acre-feet of water per calendar year within the Truckee River Basin in California. This water may be stored in reservoirs at times when the flow in the Truckee River at the Iceland gauge exceeds 500 cubic feet per second. This is the provision in the compact to allocate water from the Truckee River for use in California which was not a part of the Truckee River Decree of 1944. 2) The amount of water as decreed to the Sierra Valley Water Company by judgment in the case of the United States vs. Sierra Valley Water Company in the U. S. District Court for Northern California. The amount of water decreed to the Sierra Valley Water Company totaled 60 cubic feet per second for irrigation, domestic and stockwatering during the irrigation season of March 15 to September 30 of each year. 3) Six thousand acre feet of water annually from the conservation yield of Stampede Reservoir having a storage capacity of 225,000 acre-feet. California may divert all or any portion of said 6,000 acre-feet from Stampede Reservoir directly or by exchange from any source on the Truckee River or its tributaries or from Lake Tahoe. 4) When the

16,000 acre-feet allocated to California is being used or its total use is imminent, California will be permitted to develop additional yields of water for use in California, either directly or by exchange if all existing beneficial uses in Nevada are recognized. Nevada may share in such additional yield by bearing a proportionate cost of the development. 5) The right to store in Prosser Creek Reservoir a maximum of 30,000 acre-feet of water annually. There is allocated to Nevada all water in excess of the allocations made to California.

ARTICLE VII - Carson River Basin

There is allocated to the State of California: 1) The right to divert from the West Fork Carson River for existing nonirrigation uses and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands determined to be approximately 5,600 acres, an aggregate flow of water equal to a thirty-day average of 3 cubic feet per second per 100 acres or 168 cubic feet per second for the area as a whole but not to exceed a maximum aggregate diversion of 185 cubic feet per second. One unique feature of the Compact is that it provides for the rotation of all or a portion of the flow of the West Fork between California and Nevada users if the flow falls below 175 cubic feet per second. 2) The right to divert from the East Fork Carson River for existing nonirrigation uses and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands, determined to be approximately 3,820 acres, an aggregate flow of water equal to a thirty-day average of 3 cubic feet per second or 115 cubic feet per second for the area as a whole. 3) The right to store 2,000 acre-feet of water per annum within Alpine County for supplemental use on presently irrigated lands adverse to Lahontan Reservoir.

There is allocated to the State of Nevada: 1) The right to divert water from the Carson River and its tributaries commencing March 15 and ending October 31 of each year at the rate of 3 cubic feet per second per 100 acres for use on presently irrigated lands above Lahontan Reservoir determined to be approximately 41,320 acres. The rate of 3 cubic feet per second per 100 acres is based on a thirty-day average for the area as a whole and shall not exceed 700 cubic feet per second on the East Fork Carson River, 300 cubic feet per second on the West Fork Carson River, and 220 cubic feet per second on the Main Carson below the confluence. 2) The right to divert or store water in Lahontan Reservoir for use on the Newlands Project subject to diversion for existing irrigation use and to the right of each state to store waters upstream from Lahontan Reservoir.

Both states are allocated the right to store water in existing reservoirs upstream from Lahontan Reservoir to the extent of existing capacities. Present uses of water on National Forest Lands in the Toiyabe National Forest are confirmed and recognized by both states. Additional yields shall be available for development under the currently authorized Washoe Project in excess of existing beneficial uses in Nevada as recognized by Nevada Law. Such additional yields shall be allocated between the State with equal priority, 20 percent allocated to California and 80 percent allocated to Nevada. Each state has the right to participate in any development ~~project by~~ bearing a proportionate cost of such development. In the event a joint development is not feasible or desirable, each state may develop separately its proportionate share of the remaining water. Waters of the Carson River are not to be used outside the Carson River Basin except by exchange of other allocated waters from the Lake Tahoe or the Truckee River Basins.

ARTICLE VIII - Walker River Basin

The provisions of the decree in the case of United States vs. Walker River Irrigation District, et al., known as Decree C-125, are recognized and confirmed. 2) The right under Decree C-125 to store 85,000 acre-feet of water from the West Walker River in Topaz Reservoir is recognized and confirmed subject to certain exceptions. The first is that a maximum of 85,000 acre-feet of water less reservoir evaporation may be rediverted for use annually from November 1 through October 31 of the following year. The second is that the maximum rate of diversion to each reservoir is 1,000 cubic feet per second. And third, that water qualified for storage and allowed to pass through the reservoir and not rediverted in Nevada will be deemed to have been held in storage. 3) The right under Decree C-125 to store 57,000 acre-feet of water from the East Walker River in Bridgeport Reservoir is recognized and confirmed subject to certain exceptions. The first being that a maximum of 57,000 acre-feet of water less reservoir evaporation may be rediverted for use annually from November 1 to October 31 of the following year; and secondly, water may be stored upstream from the Bridgeport Reservoir without loss to the quantity allocated for storage in the Bridgeport Reservoir. 4) Each state is allocated an amount for existing diversions and uses of water from the Walker River upstream from the Weber Reservoir and not specifically covered in Decree C-125. The Commission after being established to administer the compact will ascertain the amounts and priorities of such uses.

In addition to the allocation to recognize and confirm the provisions of the Walker River Decree C-125, there is allocated to Nevada for use on the Walker River Indian Reservation a maximum of 13,000 acre-feet for storage in Weber Reservoir and a later rediversion to use and in addition 9,450 acre-feet per year, both allocations to have a priority of 1933. The season for diversion of water to storage shall be from November 1 to October 31 of the following year. The season for diversion of water directly for use shall be from March 1 to October 31 and at a maximum rate of 60 cubic feet per second.

California is allocated the right to divert water from the West Walker River at the time Topaz Reservoir is storing water, if such diversions have no net effect on the Topaz Reservoir storage for the season.

There is allocated to the State of California, 35 percent of unused waters or waters in excess of the amounts allocated or required to satisfy all rights and uses recognized and confirmed. There is allocated to the State of Nevada 65 percent of such unused water. The reregulation of storage waters allocated are not to be considered as the development of "unused water". Separate development may be undertaken by either state for surface storage of unused water of the West Walker River so allocated.

ARTICLE X - Interbasin Transfers of Use

Article X provides that either state may, directly or by exchange, use the allocations of the Truckee River in the Lake Tahoe or Carson River Basin and the waters of the Carson River in the Lake Tahoe or Truckee River Basin. It further provides that Lake Tahoe may be used as a physical facility to accomplish such an exchange.

ARTICLE XIII - Fish, Wildlife and Recreation

This article determines that the use of water for preservation, protection and enhancement of fish, wildlife and recreation is recognized as a beneficial use.

ARTICLE XXI - Non-Impairment of Rights of United States

Article XXI provides that, except as provided in Article XXII, the Compact cannot be construed as affecting the obligations of the United States to the Indians and Indian tribes or any right owned or held by or for Indians or Indian tribes subject to the jurisdiction of the United States. Nor shall it affect any rights or powers of the United States or its agencies in or to the waters of the Truckee, Carson or Walker River Basin or the Lake Tahoe Basins or the capacity of the United States to acquire rights in and to the use of those waters. Nor may it be construed as subjecting any property of the United States to taxation by either state. Nor may it be construed as subjecting any property of the United States to the laws of any state to an extent other than the extent to which such laws be applied in the absence of the Compact.

ARTICLE XXII - Ratification and Consent

Article XXII provides that the Compact shall be effective as it has been ratified by legislators of Nevada and California and has been consented to by act of Congress of the United States and that Congress has provided in its consent legislation or by separate legislation that certain provisions of the Compact shall be binding upon the agencies, wards and instrumentalities of the United States.

In 1965, a provisional draft of Compact was adopted by the two states. This was submitted to all interested agencies for comments and suggestions. Many federal agencies including Interior, Justice, Agriculture, and Commerce responded with comments and suggestions on how the Compact might be improved. Following the receipt of the comments of the federal agencies, California and Nevada spent two more years negotiating. The comments of the federal agencies were considered and utilized, and resulted in many changes in the proposed Compact. In some few instances the two states felt that the suggestions of the federal agencies could not be incorporated in the Compact.

In 1968, following the completion of the present Compact, the two states answered comments of the federal agencies to the 1965 draft. In many cases the suggestions had been adopted and in those instances in which they could not be used, the commission explained the reasons therefor.

Those provisions which the two states believe the United States should agree to be bound are found in Article XXIII of the Compact and concern only the total amount of water allocated to each state.

It is of utmost importance for the governing agencies of the United States to understand that the United States is not bound to any particular use within either of the two states nor to any particular development of any future project within the states, but would only be bound with respect to the allocations of water between the two respective states. Consequently, for effective administration and effective allocation, the states of California and Nevada believe most strongly that it is necessary for the United States to consent to enter into a binding contract insofar as Article XXII of the Compact is concerned.

The United States owns or controls almost all the storage and diversion facilities on the Truckee and Carson Rivers and Lake Tahoe. Its failure to agree to the allocations provided in the Compact would nullify the force and effect of the substantive provisions of said Compact. As an example, the United States claims the rights to all water stored in Lake Tahoe between elevations 6223 and 6229.1, or approximately 720,000 acre-feet of water. The Compact provides for use within the Tahoe Basin of 34,000 feet allocated on the basis of approximately 2/3 to California and 1/3 to Nevada.

The area to which the Compact applies is one which unfortunately cannot claim either a firm or sufficient supply of water for its potential domestic, industrial and recreational development. Thus, present uses are provided for in the Compact in terms of allocation of the water to the respective states with the hope that conservative use may allow some development for the future in these areas.

Should the United States refuse to agree to these allocations and refuse to consent to be bound by them, neither state can plan, develop or assume its individual obligation for what appears to be its future destiny. Certainly presently unused waters that are available and could be developed in the future would entail partnership of the United States as a party to the development. Each of the two states look to the United States as a partner in such development rather than as a partisan. The waters in excess of present uses have been allocated as between the two states and if the United States as a partner in the development of any future project, which at present appears to be the only realistic approach, were not bound by the allocations of water the agreements between the two states would be of no effect.

It is extremely important to recognize that the Compact was first ratified by the Nevada Legislature in 1969, by the California Legislature in 1970, and amended by the Nevada Legislature in 1971 to conform identically with the document ratified by California a year earlier. Congressional ratification has not been secured because of the continuing litigation that would be settled and dismissed under the provisions of Title I, of this Act. It is also critical to recognize that the States of Nevada and California have operated under, complied with and recognized the provisions of the Compact over the fourteen year period from 1970 to date. This period of time has conclusively demonstrated the validity, effectiveness and the applicability of the document and further confirms that it does, in fact, provide for an equitable allocation of water between the states in a manner which is not detrimental, nor adverse to the interest or prerogatives of any water user or interest in either state.

On behalf of the State of Nevada, we respectfully urge your favorable consideration of the legislation before you as a vehicle to resolve long-standing, continuing and potentially extended conflicts relating to the limited water supplies of the Truckee, Carson and Walker Rivers and Lake Tahoe.

Senator Wallop. Thank you, Mr. Westergard.

I would make two observations, three really. One is that I had an opportunity to review your testimony before, and it's very articulate. We appreciate it.

Second is that I know of no usual circumstances surrounding water, except controversy.

Mr. Westergard. I'd agree with that.

Senator Wallop. The third is that it used to be that the tool of a water thief was a shovel. Now it appears to be a court. We in Wyoming have suffered a variety of those things since we are the upstream State for virtually everything. We'll probably continue to find that that's our role.

We find there is no massive regard for species that our neighbor States once had, but now discover they are great allies in stealing Wyoming water. I don't know what ultimately will come of that except that I believe that compacts in one way or another are going to have to be either by decree or by agreement amongst them to share the obligations for water as well as the quantities of water.

I don't see any reason why an upstream State should be the sole accountable party for the protection of species all the way into the ocean. Ultimately that will relieve probably Californians more than anyone else. But it still won't work in the long run.

Chic, did you have any questions?

Senator Hecht. No, Mr. Chairman.

I think Roland Westergard is about as knowledgeable on this as anyone in the State of Nevada, or perhaps the country, having worked on it. You'll remember the special session that Paul Laxalt, then Governor of Nevada, called when I was a State senator, and the urgency of this, to get it ratified.

Mr. Westergard. Yes, sir.

Senator Hecht. And so he has lived with this.

How many years have you been with the State, Roland?

Mr. Westergard. Twenty-five, Senator Hecht.

Senator Hecht. So this has been with you during that whole time.

Mr. Westergard. Yes; it has. And I'd like to see it concluded, as Bob Broadbent would, before both of us are gone.

[General laughter.]

Senator Hecht. I wholeheartedly agree and commend your efforts on this.

I have no further questions, Mr. Chairman.

Senator Wallop. As we used to say in Wyoming, if you weren't doing this, you'd be doing something else.

[General laughter.]

Senator Wallop. Everybody has to have some incentive to spend a life.

There were no environmental groups that indicated the desire to appear before this committee on S. 1558, but there has been some criticism raised by them because it waives the application of the Endangered Species Act and NEPA.

In your testimony, which you submitted, you mentioned that it was critical that the agreements not be subject to prolonged collateral attack in the court.

In your opinion, would the fish in Pyramid Lake be better off under this agreement than they would be if NEPA and the Endangered Species Acts applied, and if so, why?

Mr. **Westergard**. Yes, sir. I think, unquestionably, they'd be better off under this agreement.

This agreement provides finality. It provides a timely resolution of this issue. We think that in accordance with being timely it is a more expeditious way to address the question. The alternative is continued litigation, which is obviously time consuming and expensive, as Senator Hecht has indicated.

This legislation not only would provide that finality, but it would provide funding for the implementation and construction of facilities to protect and enhance the endangered species. So, it's our position that yes, with the funding and the other provisions of this bill, we would be far ahead to proceed, rather than take the longer period of time to address it through those other avenues, yes, sir.

Senator **Wallop**. Well, as Senator Hecht has indicated, you have been involved in the compact negotiations which are found in title II.

If Congress ratified title II, would this abrogate any Federal rights to water for national forests around Lake Tahoe or elsewhere in Nevada?

Mr. **Westergard**. Absolutely not.

There's a specific provision in the compact that indicates that the document itself shall not derogate, abridge, or in any way impair any rights by the private individual, an entity, or the Federal Government.

The only qualification on that, Senator, is one that you are well familiar with, I am sure, because of your familiarity with interstate compacts. It does provide an allocation between the States, and if there were a Federal requirement or a private requirement or otherwise, that requirement would have to be satisfied out of the allocation to the specific State where the use is made.

But that is consistent with water administration throughout the West.

Senator **Wallop**. Would the ratification of the compact invalidate any court decrees which allocate water among users in either State or change the amount of water under those decrees?

What about the level of water storage for Lake Tahoe decreed to the United States?

Mr. **Westergard**. The answer is no, it would not in any way impair or impact upon those decrees.

As a matter of fact, the compact specifically recognizes that the rights allocated to the respective States shall be administered, that is, the supply shall be administered and distributed in accordance with the respective State laws, and that includes a recognition of all Federal decrees, State decrees, any right that is established validly under any State or Federal process.

So it would in no way adversely impact those decrees.

Similarly, you raise a very interesting point, Mr. Chairman about Lake Tahoe. The water users in the Lake Tahoe Basin were not included in the Truckee River decree, which has been found res judicata to be protected.

This compact would establish two things: One, a limit on how much water can be diverted and used in the Lake Tahoe Basin, so it protects downstream users in both States; and, two, it establishes an amount of water that can be diverted. So it recognizes that there is a need in the Tahoe Basin. But it established in effect a limit both ways. So it's for the protection not only of the Tahoe Basin but the water users in both States.

Senator WALLOP. Thank you very much for your most useful testimony.

We appreciate it.

Mr. WESTERGARD. Thank you, sir. It's been a real pleasure to appear before you.

Senator WALLOP. Our next witness is no stranger to the Congress, Hon. James Santini, attorney for the Truckee-Carson Irrigation District.

Welcome.

STATEMENT OF HON. JAMES D. SANTINI, ATTORNEY AT LAW, REPRESENTING THE TRUCKEE-CARSON IRRIGATION DISTRICT, FALLON, NV

Mr. SANTINI. Good morning, Mr. Chairman and Senator Hecht.

With some sensitivity about the posterior of the committee members, with leave of the chairman that I will submit my testimony in toto and would request permission to summarize parts of it.

Senator WALLOP. Thank you.

Mr. SANTINI. Mr. Chairman and Senator Hecht, I am testifying before you today on behalf of the Truckee-Carson Irrigation District in support of S. 1558.

The legislation encompasses issues and areas that are of deep personal and professional interest to me.

I was born and raised in Reno, NV. I cannot remember a time when there wasn't a legal battle raging about the allocation of Truckee River water.

It is encouraging that, within the general provisions of S. 1558, the consuming and the competing entities may finally resolve the generations of legal upheaval.

The adoption of S. 1558 will stabilize the water allocation of Pyramid Lake, provide the only immediate assistance to the endangered cui-ui fish population, substantially enhance the lake, river, and wetlands areas affected, and, incidentally, save millions of dollars in court and legal fees over the balance of the 20th century.

I say this parenthetically, recognizing I may be working against my own interest here.

Without this kind of legislative response, the courtroom battles will continue to erupt unchecked.

The Truckee-Carson Irrigation District finds that the major items within the legislation that are important to it are: One, dismissal of all lawsuits; two—and I am referring now to page 5 in my testimony—the establishment of an operating criteria consistent with State law that is reasonable and workable; three, the protection of the wildlife and wetlands within the Lahontan Valley; four, protection of operation and maintenance charges in accordance with State law; and five, the cancellation of all repayment obligations.

The Newlands project was the first construction project authorized by the U.S. Reclamation Service. With the construction of Derby Dam on the Truckee River, the Derby Dam water is diverted from the Truckee River into the Truckee Canal for irrigation of lands in Ferley, the Swingle Bench area, as well as diversion to the Lahontan Reservoir for storage.

It now serves approximately 1,500 water users and extends 31 miles to Lahontan Reservoir.

The main dam and storage facility for the Newlands project is Lahontan Dam, located in the Carson River, 15 miles west of Fallon, NV. The capacity of the reservoir is 29,000 acre-feet of water.

The reservoir is used primarily for control of water flows in the Carson River as well as diverted flows from the Truckee River.

The project provides water to approximately 2,500 water users who own 73,002 acres of water rights. The project is cattle oriented. The major crop grown is alfalfa.

Because of the limited supply of water in western Nevada, multiple uses of water have developed.

For example, the Lahontan Reservoir has become an extremely popular year-round multiuse unit for the State park system. A park, consisting of 41,500 acres, offers camping, picnicking, around 69 miles of shoreline, and swimming, water skiing, sailing, fishing, and boating are very popular. The shoreline of the reservoir has many miles of sandy beaches and trees for shelter from the hot summer sun, although, parenthetically, I never found one of those trees.

[General laughter.]

Mr. Santini. In addition to the recreational use at Lahontan, there currently exists approximately 22,000 surface acres of fishable waters throughout the Lahontan Valley, including the Lahontan Reservoir. This habitat supports 25 species. Those of major interest to the Nevada Department of Wildlife and Sportsmen include walleye, large-mouth, black bass, white bass, and catfish—and, parenthetically I never found any of those either.

In the last 4-year period, from 1980 to 1983, approximately 100,000 angler days were expended annually in the Lahontan Valley, with an average yearly harvest of nearly one-quarter million gamefish.

The Nevada Department of Wildlife and the State of Nevada have, within the last 4 years, introduced the walleye into the Lahontan Reservoir and anticipates the Lahontan will become the primary walleye fishery for the State of Nevada.

Just as important as the recreational use of the wildlife areas within the Lahontan Valley are the Stillwater Wildlife Management Area and the Carson Lake Marsh Area. The Stillwater Wildlife Management Area, managed by the U.S. Fish and Wildlife Service, encompasses approximately 140,000 acres of high desert vegetation and wetlands. The Carson Lake Marsh Area, managed for protection of wildlife and its habitat, is included within a 30,000-acre pasture and marsh.

These wetlands comprise one of the most productive wildlife habitats in Nevada, supporting 75 percent of the State's total duck population, 50 percent of the State's Canada goose population, 50 percent of the whistling swan resources; one-third of the total Pacific Flyway population of canvasback ducks use the Stillwater wetlands for a staging area during the migration period.

The marshes also support a large percentage of nongame resources.

Surprisingly, the Anaho Island white pelican colony at Pyramid Lake, which makes up 14 percent of the total continental population, makes daily feeding flights to Lahontan Valley wetlands during the spring and early summer, and again in August and September.

Therefore, the fisheries resources supported by these wetlands are essential to the pelicans' well-being and ultimate survival.

In addition to supporting various species of wildlife, the Lahontan Valley is the primary waterfowl hunting area, in which 25,000 hunter use days are accounted for annually during the duck and waterfowl season.

Progressing to the last paragraph on page 4, at the present time, the district is actively involved in at least five major cases with the tribe and the United States concerning the use of water on the project. The district was also the primary defendant in two major cases concerned with rights to use the waters of the Truckee and Carson Rivers, which were recently concluded—*Nevada* v. *United States*, and *United States* v. *Alpine Land and Reservoir Company*.

The district's litigation expenses have been and are now a major item of their operating budget.

Moving to paragraph 3, page 5, the district currently owes to the United States through the Department of the Interior, Bureau of Reclamation, the total sum of $1,475,737.93. The amount is being repaid under three contracts.

With regard to the forgiveness of the $1.5 million in obligations to the United States, the district feels that the Government is, at this time, recognizing its earlier obligations.

In 1967 and 1968, the United States and the TCID agreed—referred to as the nine-point program—that: TCID would reduce its diversion and release of water for power generation; TCID would also transfer a 64-acre tract at Lake Tahoe to the U.S. Forest Service, valued at several million dollars; and TCID agreed to a reduction in the maximum acreage for development of water rights—approximately 13,000 acres.

In exchange, the Federal Government would provide nonreimbursable funds in the amount of $3 million for the rehabilitation and betterment of four dams on the project as well as the Truckee Canal.

The United States would also provide $1.5 million for rehabilitation and betterment of the district canal, wherein the district would reimburse the Federal Government up to 50 percent.

The United States would also approve the transfer of water rights that were currently on the books of the district and allow the district to use the new water rights.

The district was to receive sufficient water for the wet-lands, which was lost when the diversion for winter power production was ceased. As a result of that agreement, the district voluntarily discontinued diversion of water to the designated limit, stopped releases for power generation, and eventually lost the 64-acre tract to the U.S. Forest Service.

The Federal Government, however, did not meet its obligation and, in fact, has opposed the water right transfer and will not allow any further water rights to be issued.

The needed work on the dams and the Truckee Canal have been partially completed at district expense, which makes up approximately $1.4 million of the amount currently owed to the United States for repayment of the original construction charges.

In addition, the district has also expended nearly $3 million in litigation expenses, fighting court battles with the United States in order to protect water rights which were originally issued by the United States to the settlers. Those settlers were encouraged to reclaim the arid land for agricultural development.

Eventually, the district and landowners' water rights were sustained and upheld by the U.S. Supreme Court. Therefore, forgiveness of the repayment obligation by the United States is, I believe, a recognition by the Federal Government of the earlier agreement with the United States as set forth above.

If the debt is forgiven, it reduces the district's obligations by approximately $58,000 a year in repayment obligation to the U.S. Government.

The district fully supports passage of the legislation as a resolution to the many disputes that have continued for so long.

I would be happy to respond to any questions you may have.

[The prepared statement of Mr. Santini follows:]

Testimony of

The Honorable James D. Santini
Attorney at Law

Representing Truckee-Carson Irrigation District

before the
Subcommittee on Public Lands, Reserved Water & Resource Conservation
Senate Committee on Energy & Natural Resources

S. 1558 Hearing

Monday, October 21, 1985
Dirksen - Room 366
Washington, DC

Mr. Chairman and members of the Committee, I am testifying before you today on behalf of the Truckee-Carson Irrigation District in support of S. 1558.

This legislation encompasses issues and areas that are of deep personal and professional interest to me. I was born and raised in Reno, Nevada. I cannot remember a time when there wasn't a legal battle raging about the allocation of the Truckee River water.

It is encouraging that within the general provisions of S. 1558 the consuming and competing entities may finally resolve the generations of legal upheaval. The adoption of S. 1558 will stabilize the water allocation in Pyramid Lake; provide the only immediate assistance to the endangered Qui-ui fish population; substantially enhance the Lake, River and wet lands areas affected; and incidentally save millions of dollars in court and legal fees over the balance of the 20th century. Without this kind of legislative response the courtroom battles will continue to erupt unchecked.

Early in this century, the United States built the Newlands Reclamation Project pursuant to the Reclamation Act of 1902. The Newlands Project, originally known as the Truckee-Carson Project, was promoted and advertised by the U.S. Reclamation Service "as one of the best sections in the entire west for dairying, stock raising, truck gardening, sugar beet culture and general farming". The project began in 1903 -- the first construction project authorized by the U.S. Reclamation Service -- with the construction of Derby Dam on the Truckee River. At Derby Dam water is diverted from the Truckee River into the Truckee

Canal for irrigation of lands in the Fernley and Swingle Bench area as well as diversion to Lahontan Reservoir for storage. The canal serves approximately 1,500 water users and extends 31 miles to Lahontan Reservoir. The main dam and storage facility for the Newlands Project is Lahontan Dam located on the Carson River approximately 15 miles west of Fallon, Nevada. The capacity of the reservoir is 295,000 acre-feet of water. The reservoir is used primarily for control of water that flows in the Carson River as well as the diverted flow of the Truckee River. A major consideration in diverting the flows for storage from the Truckee River is the forecasted runoff of the Carson River as well as the need for carryover storage for the next irrigation season. The project provides water to approximately 2,500 water users who own 73,002 acres of water right lands. The project is cattle oriented and the major crop grown is alfalfa. The general elevation of the project lands is about 4,000 feet above sea level. The irrigation season averages about 230 days with the frost free period averaging about 130 days.

Included within the Lahontan Valley and serviced by the Truckee-Carson Irrigation District is the Fallon Paiute Shoshone Indian Reservation and Colony which has 4,877 acres of water right land and an additional 560 acres of water right land designated in a suspended classification. Currently there are approximately 750 tribal members residing on the reservation and many are involved in the agricultural economy.

Because of the limited supply of water in Western Nevada multiple uses of the water have developed. For example, Lahontan Reservoir has become an extremely popular year-round multi-use unit of the Nevada State Park System. The Park, consisting of 41,500 acres, offers camping and picnicking around 69 miles of shoreline. Swimming, water skiing, sailing, fishing and boating are very popular as the shoreline of the reservoir has many miles of sandy beaches with trees for shelter from the hot summer sun. Anglers come to Lahontan Reservoir to test their fishing skills on the popular walleye, bass and other warm water species.

The State Parks have been improving the facilities regularly and have recently negotiated a contract for a private marina on the north shore in which $2.5 million will be spent over the next 2 years. The use at Lahontan on the Memorial Day weekend this past year was approximately 45,000 people utilizing

1,750 campsites per night as well as 800 boats per day. In 1984, the use at Lahontan included approximately 600,000 visitor days, 15,000 boat launches and 108,000 camper days. The Park has experienced an 8% annual increase in use over the past few years and expects 1985 to be approximately 8 to 10% greater than 1984. The State has invested $3.5 million dollars in recent years to improve the facilities and expects that the new marina will increase use at Lahontan tremendously. In fact, Lahontan is considered one of the major recreational facilities in Northern Nevada.

In addition to the recreational use at Lahontan, there currently exists approximately 22,000 surface acres of fishable waters throughout the Lahontan Valley including Lahontan Reservoir. This habitat supports 25 different species. Those of major interest to the Nevada Department of Wildife and sportsmen include the walleye, largemouth black bass, white bass and catfish. In the four-year period from 1980-1983, approximately 100,000 angler days were expended annually in the Lahontan Valley with an average yearly harvest of nearly one-quarter million game fish. The Department of Wildlife of the State of Nevada has within the last four years introduced the walleye into Lahontan Reservoir and anticipates that Lahontan will become the primary walleye fishery in the State of Nevada.

Just as important as the recreational uses are the wildlife areas within the Lahontan Valley -- Stillwater Wildlife Management Area and the Carson Lake Marsh Area. The Stillwater Wildlife Management Area, managed by the U.S. Fish and Wildlife Service, encompasses approximately 140,000 acres of high desert vegetation and wetlands. The Carson Lake Marsh Area, managed for the protection of wildlife and its habitat, is included within a 30,000 acre pasture and marsh area. These wetlands comprise one of the most productive wildlife habitats in Nevada. They support 75% of the State's total duck population, 50% of the State's Canada goose population and 65% of the whistling swan resource. One-third (1/3) of the total Pacific Flyway population of canvasback (redhead) ducks use the Stillwater wetlands for a staging area during migration periods. The primary marshes also support a large percentage of nongame resources. For example, Carson Lake provides habitat for the largest of the top three breeding populations in the United States of white-faced ibis -- considered for listing under the Endangered Species Act. In addition, 25% of our statewide rare and endangered bald eagle population utilize Lahontan Valley wetlands as winter habitat. Surprisingly, the Anaho Island white pelican colony at Pyramid Lake, which makes up 14% of the total continental population, makes daily feeding flights to Lahontan Valley wetlands during the spring and early summer and again in August and September. Therefore, the fisheries resources supported by these wetlands are essential to the pelicans well-being and ultimate survival.

In addition to supporting various species of wildlife, the Lahontan Valley is a primary waterfowl hunting area in which 25,000 hunter use days are accounted for annually during the duck and waterfowl hunting seasons. The Nevada Department of Wildlife, together with the Irrigation District, is in the process of expending approximately $1,000,000.00 obatined from the Fleischmann Foundation, to improve the Carson Lake wetlands area for better management and control of the water resource that is available as a result of the irrigation project existing in the Valley. Currently, a contract has been let to construct three (3) bird observation towers for bird watching enthusiasts.

Beyond the value of the irrigation project to the economy and livelihood of the people living within the project boundaries, the Lahontan Valley is important to the people of Northern Nevada for recteational use; waterfowl hunting; fishing; and its wildlife habitat in the valued wetlands of Stillwater and Carson Lake.

As in many areas of the West, the available water supply is limited. In Nevada the average precipitation is less than any other state in the union. The Lahontan Valley only receives about 5 inches of rainfall annually. As can be seen there is just not enough water to meet all the rights and demands of the users. This has generated litigation which in the case of the Truckee and Carson Rivers has been extensive and on-going for sixty years. At the present time, the District is actively involved in at least five major cases with the Tribe and the United States concerned with the use of water on the Project. The District was also the primary defendant in two major cases concerned with rights to the use of the waters of the Truckee and Carson Rivers which were recently concluded, Nevada v. United States, 103 S. Ct. 2906 (1983) and United States v. Alpine Land & Reservoir Co., 697 F. 2d 851 (9th Cir.) cert. denied 104 S. Ct. 193 (1983). The District's litigation expenses have been and are now a major item in our operating budget, and we have been required to forego expenditures for needed physical improvements in order to finance this litigation. There is no end in sight to the litigation and there is no assurance that the final results of the litigation, even if the District wins, will satisfactorily resolve the problems. The bottom line is that litigation has not and probably will not provide a realistic solution. Some type of settlement which involves compromises will be required. In the District's view, this legislation provides the vehicle whereby this settlement can be accomplished.

The major items within this legislation that are important to the District are:

the dismissal of all lawsuits;
the establishment of an operating criteria consistent with State law that is reasonable and workable;
the protection of the wildlife and wetlands within the Lahontan Valley;
protection of operation and maintenance charges in accordance with State law;
and, the cancellation of all repayment obligations.

The District currently owes to the United States through the Department of Interior, Bureau of Reclamation, the total sum of $1,475,737.93. This amount is being repaid under three contracts, Ilr-93-$67,778.22; 7-07-20-W0004 - $1,191,897.47, and 7-07-20-W0097 - $216,062.24. The District has requested additional funds in the approximate amount of $250,000.00 for repairs to the outlet structure of Lahontan Dam. That contract has been approved but has not been executed at this time.

With regard to the forgiveness of the approximately $1.5 million in obligations owing to the United States, the District feels that the government is at this time recognizing its earlier obligations. In 1967 and 1968 the United States and the Truckee-Carson Irrigation District agreed (referred to as the nine point program) that; TCID would reduce its diversion and release of water for power generation; TCID would transfer a 64 acre tract at Lake Tahoe to the United States Forest Service (valued at several million dollars) and TCID agreed to a reduction in the maximum acreage for development and water-rights (approximately 13,000 acres). In exchange the federal government would provide nonreimbursable funds in the sum of $3 million for rehabilitation and betterment to the four dams on the Project as well as the Truckee Canal. The United States would also provide $1.5 million for rehabilitation and betterment of the District Canal wherein the District would reimburse the federal government up to 50%. The United States would also approve the transfer of water rights that were currently on the books of the District and allow the District to issue new water rights.

The District was to receive sufficient water for the wet land which was lost when the diversion for winter power production was ceased. As a result of that agreement, the District voluntarily discontinued diversion of water to the designated limit, stopped releases for power generation, and eventually lost the 64 acre tract to the U.S. Forest Service. The federal government, however, did not meet its obligation and, in fact, has opposed the water right transfer and will not allow any further water rights to be issued. The needed work on the dams and the Truckee Canal have been partially completed at District expense which makes up approximately $1.4 million of the amount currently owed to the United States for repayment of the original construction charges. In addition, the District has also expended nearly $3 million in litigation expenses fighting the court battles with the United States in order to protect the water rights which were originally issued by the United States to settlers. Those settlers were encouraged to reclaim the arid land for agricultural development. Eventually the District and land owners' water rights were sustained and upheld by the United States Supreme Court. Therefore, the forgiveness of the repayment obligation by the United States is, I believe, a recognition by the federal government of the earlier agreement with the District that is set forth above. If the debt is forgiven it reduces the District's obligations by about $58,000 annually in repayment to the United States government.

The District fully supports the passage of this legislation as a resolution of the many disputes that have continued for so long.

Thank you.

Senator WALLOP. Thank you.

Chic.

Senator HECHT. Jim, the Federal Government is forgiving their obligations. Are you forgiving all the legal fees, too?

[General laughter.]

Mr. SANTINI. We'll have to take that up in the postlegislative settlement discussion. I wouldn't want to rush to judgment on that.

[General laughter.]

Senator HECHT. No further questions, Mr. Chairman.

Senator WALLOP. You answered very lucidly the reasons for the provision in the bill of the $1.5 million waiver. It is my understanding that the per farm acreage of the district is small on a per farmer basis, and yet the water from the Truckee River has been under constant litigation, as you have said, over a number of years, and as everybody else said.

Can you tell me whether or not the cost of litigation has had an impact on the district's ability to maintain and operate the project?

Mr. SANTINI. Mr. Chairman, Senator Hecht, there is no question that just the loss of the $3 million over the last 10 to 12 years has resulted in deferring rehabilitation in the district of the canals and of the dams that would have enhanced, I suspect, better water allocation and would have improved water distribution.

Yes; it has resulted in the loss.

Senator WALLOP. Can you tell me why the district is interested in the wildlife and recreation areas of the Lahontan Reservoir, and does the runoff for the Stillwater Wildlife Area impact in any way upon water rights for the district?

Mr. SANTINI. To your first question, Mr. Chairman, I hope that on page 4 of my statement I have adequately addressed the interest of TCID in the wetlands and the wildlife area. TCID is, No. 1, a party to a triparty agreement between the U.S. Bureau of Reclamation and the State of Nevada, and we have an obligation in TCID to allocate a deliberate percentage of the amount of water that reaches the last dam into that marshland or wetland area.

No. 2, part of the area that you have inquired about is part of the Carson pasture area, and in conjunction with the Fleishmann estate and the State of Nevada, almost $1 million in improvements have been delivered to that area through the administration of TCID.

There is within the designated area pasturage, livestock pasturage, that is a source of both small revenue, concededly revenue, but also a management obligation to the district. And, finally, No. 4, Mr. Chairman, it seems to TCID that it has an obligation in terms of the general welfare of the community to do what it can to enhance the wildlife and wetlands area.

Senator WALLOP. It's very generous of the district in terms of having been in litigation for that long a period of time that it hasn't gotten itself down to a sort of foxhole mentality and let its efforts go only toward itself. I think the record ought to show that TCID has maintained, in spite of enormous burdens of litigation and other things, a sense of responsibility to the rest of the community in which it exists.

Under the menu of options available to the Secretary to maintain the level of Pyramid Lake, at the agreed-upon level, he may acquire water by purchase, by exchange, or by other agreement. Do you anticipate that in drought years this might mean that the Secretary would purchase water rights from TCID and retire land presently under irrigation?

Mr. **Santini**. Mr. Chairman, it would be exceedingly difficult for me to represent to you that under a willing seller-willing buyer context in drought years, because of the demands presently existing on TCID to service its existing water right users, there would be extensive buy-sells taking place. There might be some small-scale buy-sell.

I think TCID is in a somewhat frustrating circumstance because, to the extent that they sell for fair market value water right entitlements in the district, they undermine their own revenue base for operation in the future, when water is plentiful or adequate, at least to meet prospective water use consumption.

To repeat, I don't think there would be wholesale water right sales during that drought period.

Senator **Wallop**. I guess that satisfies my questions. Unless others arise, we will go on. We will try to get through the very useful statement that you brought here on behalf of the district. We certainly appreciate it.

Mr. **Santini**. Thank you, Mr. Chairman, Senator.

Senator **Hecht**. Thank you, Jim.

Senator **Wallop**. The last witness is Mr. Marcus Faust, the attorney for the Sierra Pacific Power Co., Reno, NV.

STATEMENT OF MARCUS G. FAUST, ATTORNEY AT LAW, SIERRA PACIFIC POWER CO., RENO, NV

Mr. **Faust**. Mr. Chairman, Senator Hecht, I appreciate very much the opportunity to testify on behalf of the Sierra Pacific Power Co. With your permission, I would like to insert into the record the very lengthy statement that I have prepared——

Senator **Wallop**. By all means.

Mr. **Faust** [continuing]. As well as a more abbreviated oral statement, and simply make two or three oral comments and then be available for your questions.

Senator **Wallop**. By all means.

Mr. **Faust**. The Sierra Pacific Power Co. is a regulated investor-owned utility, which is engaged in the production and transmission of electrical power as well as the transmission of gas and, of course, it also has the responsibility for the water supply for the Reno-Sparks area and for portions of Washoe County.

Several years ago, the president of Sierra Pacific Power Co., upon the recommendation of the water division and the hydrologist studies that had been done by that division, announced a moratorium on water service connections in the expanding area of Reno, called Truckee Meadows.

Similar to many of the other areas that we find in the West, we have an agricultural area that is in transition and the growth that is being experienced in Reno is moving into this area. Sierra Pacific found that, although water rights were available for service connection to occur, there was a concern that in drought years, homes that were presently being constructed could not be served notwithstanding an abundance of water rights owned by Sierra.

This action, the announcement of the moratorium, was met with some discouragement by developers as well as by the State public service commission, who asked Sierra Pacific to justify its action.

The State public service commission then began its own investigation of water right availability, and, in fact, came to the conclusion that, simply put, during dry periods, Reno-Sparks was in a very precarious situation as far as water is concerned presently.

Since that time, there have been certain efforts taken to mitigate that concern, and the moratorium has been partially lifted in certain areas.

However, Sierra Pacific, without additional storage capability, will not be able to supply water to the expanding areas of Reno-Sparks. That is what Sierra Pacific's concern is with respect to this legislation.

We had hoped that we would be able to enter into a contract with the Bureau of Reclamation to store water in Stampede Reservoir. But, as a result of the Ninth Circuit decision, for which the Supreme Court denied certiorari, Stampede Reservoir is presently being operated for the benefit of the cui-ui endangered species.

As a part of the negotiations, Sierra Pacific has always had as one of its interests the rehabilitation of the cui-ui because it is, we believe, in our interest for that fish to be delisted, so that the competing uses along the water will no longer exist.

We in this settlement have agreed to withdraw an application that we have filed with the State water engineer for all of the remaining unappropriated water of the Truckee River. That is a priority filing. We are first in line.

Now, the Pyramid Lake Paiute Indian Tribe had asserted by reason of the Winters doctrine a reserved water right which went to the Supreme Court and, as has been indicated by Mr. Westergard and by other witnesses, the Supreme Court has simply adjudicated that that water right does not exist.

The tribe then later attempted to amend its original complaint and assert a reserved water right under the Winters doctrine for unappropriated water, and approximately 1 month ago, the Federal court in Nevada ruled that they could not so amend their original complaint because it would prejudice the other remaining parties.

Under this settlement, the Sierra Pacific Power Co. will withdraw its application with the State engineer and allow for the second application, or subsequent application, filed by the Pyramid Lake Paiute Indian Tribe to take precedence, thereby assuring the fish and the tribe an adequate, we believe, or hopefully an adequate water supply so that the cui-ui fish may be able to survive.

We believe, then, that this is the best mechanism by which the tribe can acquire the additional water that it needs for the delisting of the cui-ui, and do so in the established mechanism of western water law through the State engineer's office, rather than through the Endangered Species Act or through some other mechanism or assertion of reserved Indian water rights of some nature.

In exchange, Sierra Pacific Power Co. will be able to enter into a contract to store water in Stampede Reservoir, and there is in section 105 of the legislation an extensive formula for a 10-year period of time whereby we are given a right to withdraw only during dry periods up to an average of 6,000 acre-feet per year.

Beyond 10 years, we anticipate that the growth in the Reno-Sparks area will cause us to rely upon that storage in Stampede Reservoir probably on a firm yield basis, and so the rights are then spelled out for that water supply.

We also will agree to a new management structure along the Truckee River that will permit releases from Lake Tahoe during the spring months of the year, so that the water level in the lower Truckee River is high enough to permit the natural spawning to occur.

Now, if I could make one final comment with respect to the Endangered Species Act and the National Environmental Policy Act provisions that are in the legislation, Sierra Pacific, in the negotiations, insisted upon those provisions being inserted in the bill.

The National Environmental Policy Act provision is an exemption. It is supported by the tribe as well as by all of the other parties that have negotiated this.

We have studied the river extensively. We have done extensive biological research on the fish. Sierra Pacific has pioneered a computer model to determine the variations and changes in stream flow for the benefit of all of the parties, and we have participated in a technical committee with the Fish and Wildlife Service, with the State fish and wildlife people, with the Bureau of Reclamation, and with a number of others.

We are completely confident that the program outlined in the legislation, the menu of options, will provide us with enough opportunity to recover the cui-ui without any guarantees, but within the maximum flexibility of all of the parties.

So the comment that you were making previously, Senator, with respect to all of the parties contributing to the recovery of the cui-ui, is, in fact, very accurate.

We hope that that occurs—again, for the reasons that I previously indicated.

However, because the cui-ui has a limited spawning cycle, and because there is belief by the Fish and Wildlife Service that there actually is only a 3- to 4-year period of time left for a certain year-class of the cui-ui to successfully spawn naturally, we are concerned that if this action requires an environmental impact statement or an environmental assessment, that, then, could later be challenged by parties not directly involved in the negotiations, and that could essentially eliminate this immediate window of opportunity.

We believe that, for the benefit of the cui-ui, we need to move quickly.

Therefore, we believe that the studies are adequate and it is not necessary to pursue the environmental impact statement process.

Now, with respect to the Endangered Species Act provision in 13(b) of the bill, it is not an exemption per se, and it has been characterized by a number of environmental groups in previous testimony before the Select Committee on Indian Affairs that it is an exemption that is being pursued.

In fact, it is not.

What the legislation is essentially saying is that the actions that are being contemplated in the bill by the Secretary to recover the cui-ui and also assist the Lahontan cutthroat trout will be deemed sufficient for purposes of the Endangered Species Act.

This is to provide all of the parties to the settlement the finality that they need in order to abandon all of the litigation and the positions that they have entrenched themselves in over the period of years and have the assurance that they can go forward with certain adequate protections to enter into these new negotiations and the agreements that are contemplated in the legislation.

It has been suggested that the existing exemption procedure in the Endangered Species Act could be adequate for these purposes. Our response is severalfold.

No. 1, that procedure is in contemplation of a Federal action, such as the construction of a highway or the construction of a dam that could impair an endangered species. In fact, under this legislation, none of that is going to occur. In fact, all of the authorized activities under this legislation are intended for the recovery of the cui-ui fish.

So, there isn't any kind of construction that will somehow need an exemption from the Endangered Species Act.

Furthermore, that procedure itself contemplates at least 1½ years, possibly 2 years, to take its effect.

Furthermore, there is right of appeal to a Federal circuit court by anyone of that exemption, and there is no time limit with respect to that litigation.

What we're hoping to do in this legislation is simply put to rest all of the litigation surrounding the Endangered Species Act. The Paiute Indian Tribe, in their testimony, in response to questions before the Select Committee on Indian Affairs, supports these two provisions in the bill because of their desire for there to be finality and their desire to get on with the recovery of the cui-ui fish.

On behalf of Sierra Pacific Power Co., we would not abandon our unappropriated water rights or any of the other positions that we have gained by right of litigation if we could not receive an assurance from the U.S. Congress that some third party, long-arm special interest group from Washington, DC, may desire to sue under the Endangered Species Act, and after we have done all of what has been agreed to, then come in and force us to do more, which the parties presently are not capable of providing.

With that, Senator, I'd like to thank you for permitting us to present our story to you today. We appreciate you as the recognized expert on water law in the Senate and also the competent staff that you have on your subcommittee and the excellent job that they have done, and also the strong support from Senator Hecht's office.

I would be happy to answer any questions that you may have.

[The prepared statements of Mr. Faust follow:]

ORAL SUMMARY OF TESTIMONY
OF MARCUS G. FAUST

Mr. Chairman and members of the Committee my name is Marcus G. Faust. I am an attorney representing Sierra Pacific Power Company. My testimony today is directed to the Bill as it would be read if it included the changes sent by representatives of the State of Nevada, Sierra Pacific Power Company, the Truckee-Carson Irrigation District, the Carson-Truckee Water Conservancy District, Washoe County and Congressional delegation on September 13, 1985.

Sierra Pacific Power Company (Sierra Pacific) is a Nevada corporation and is the successor to The Truckee River General Electric Company. It is a public utility engaged in the purchase, transmission, distribution, and sale of water in the Cities of Reno and Sparks, Nevada, and in portions of Washoe County, Nevada.

It is also engaged in the generation, purchase, transmission, distribution and sale of electric energy in the States of Nevada and California. Sierra Pacific has four hydroelectric facilities on the Truckee River in both Nevada and California. The water used to operate those facilities comes from the Truckee River.

After nearly fifteen years of continuous litigation, a reliable supply of municipal and industrial water for the cities of Reno and Sparks and Washoe County is not assured, the cutthroat trout and cui-ui fish remained listed as threatened and endangered respectively, the manner in which the Newlands Project will be operated remains undetermined and additional inconclusive and expensive litigation is probable.

This Bill should be enacted because it lays a new foundation on which the parties will build a final solution to the long-standing and unresolved conflicts to water from the Truckee River. That foundation has at least five essential elements which are found in Sections 104, 105, 106, 108 and 111 of this legislation. Without enactment of this Bill, any further negotiated resolution of these problems will be impossible.

The elements necessary to a negotiated settlement of these long-standing problems involve Pyramid Lake and its fishery, the municipal and industrial water supply for the Cities of Reno and Sparks and Washoe County, Nevada, the operation and improvement of the Newlands Project, assurances to the State of Nevada that the wasteful experiences of the past fifteen years will not be repeated on other rivers and the funds and commitment to implement the programs which need to be undertaken.

As the public utility providing water to the Cities of Reno and Sparks, Nevada and to portions of Washoe County, Nevada, Sierra Pacific has a vital interest in making certain that their water supply is reliable now and in the future. Those communities will not have such a water supply without the availability of additional stored water which may be carried over for use during drought periods. In the last ten years the Truckee River annual flows have varied from 35% of normal to over 300% of normal. The 1976-1977 drought experience on the Truckee River illustrates the need for storage to hold water during large runoff years thereby providing water than can be beneficially used during dry years.

During the drought of 1976 and 1977 outflow to the Truckee River from Lake Tahoe ceased by mid-September, 1977. In addition the available storage in Boca Reservoir was exhausted by that same time. With no stored water available at Boca Reservoir or Lake Tahoe to sustain flows, by the end of September there was less than 15 cfs flowing in the Truckee River near Sparks, Nevada.

If the Truckee River system were experiencing today, October, 1985, the hydrologic conditions just described, the Reno-Sparks metropolitan area water supply would be precarious. Truckee River flows would be significantly smaller than the municipal and industrial demand which must be met from river flow. The only remaining municipal and industrial water supply for over 150,000 people would be approximately 12,000 acre feet of stored water from Independence Lake. This quantity of water is only 20% of today's annual demand.

Historically, Lake Tahoe and other reservoirs have been reduced to levels which in about one year in eight will not fully support water rights in Reno, Sparks and Washoe County. Most of these years were concentrated in the early 1930's. It can be expected that such drought conditions will occur in the future with similar frequency.

Engineering studies demonstrate that Truckee River water supplies during drought periods are not adequate to meet existing water rights. Therefore at present a commitment of almost double the water necessary for a development is required in order to protect against a drought. Clearly, then if the Cities of Reno and Sparks and Washoe County, Nevada are to have a reliable water supply now and in the future additional upstream storage must be made available to protect that supply. This Bill will make that possible.

Section 105(b) will allow the Secretary of the Interior, subject to his agreement and the agreement of the Tribe, Sierra Pacific and the Carson-Truckee Conservancy District to execute a contract for the sale of water from Stampede Reservoir in sufficient quantity to provide municipal and industrial water for the cities of Reno and Sparks and Washoe County, Nevada well into the future. As noted, the Reno, Sparks and Washoe County needs are most critical during a dry period. Upon execution of the contract and for ten (10) years thereafter, this legislation allows a dry period municipal and industrial supply based on an average annual withdrawal from Stampede storage of 6,000 acre feet or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific and the Carson-Truckee Conservancy District. The legislation also provides a means for protecting that municipal and industrial supply when Stampede Reservoir storage is at or below 50,000 acre feet or such other amount as is agreed to by the Secretary, Tribe, Sierra Pacific and the Carson-Truckee Water Conservancy District. See, Section 105(c).

The legislation provides that beyond ten years and based upon a projected demand to be defined by the Secretary, the Tribe, Sierra Pacific and the Carson-Truckee Water Conservancy District, the Carson-Truckee Water Conservancy District may withdraw from Stampede storage for municipal and industrial purposes an average of 5,000 acre feet per year or such other amount as is agreed to by the same parties. It will also allow the Carson-Truckee Water Conservancy District a dry period municipal and industrial supply based upon an average annual withdrawal from Stampede storage of 15,000 acre feet or such other amount as agreed to by the respective parties. In addition, the municipal and industrial supply will be protected when Stampede storage is at or below 120,000 acre feet or such other amount as is agreed to by the respective parties. See, Section 105(d).

As a further protection to the water supply for the cities, this legislation provides that water made available under subsections (b) through (g) of Section 105 will not be used for the purpose of dilution of sewage effluent. That provision, in Section 105(h), makes it clear that the water provided pursuant to this legislation and the agreements of the parties will be part of the municipal and industrial supply on which the Cities and County may rely.

Sierra Pacific has agreed to changes in Section 105(a)(7) which were requested by the Tahoe-Donner Public Utility District and the American Public Power Association. Those Changes are included in Exhibit A which is attached to my written testimony. Section 105(a)(7) assures Sierra Pacific that if by agreement it curtails the use of its Truckee River hydroelectric facilities the losses will be offset by power from the Western Area Power Administration or by compensation.

These provisions and others will allow Sierra Pacific and the Carson-Truckee Water Conservancy District to enter the negotiations required by Section 107 with the confidence that legislation is in place which will allow the United States to execute contracts providing for a reliable municipal and industrial water supply for the Cities of Reno and Sparks and Washoe County, Nevada.

On the foundation provided by this Bill the parties will "build" the agreements required by Section 107. These agreements will not be reached easily. However, never before has there been a federal committee to all interested parties to provide such significant assistance in reaching final solutions to these long-standing conflicts. With the enactment of this legislation, the parties can set out to meet and satisfy the requirements of Section 107 of the Bill with the confidence that the necessary federal commitment to implement their agreements is in place. Without this legislation, Sierra Pacific is confident that the agreements referred to in Section 107, which are necessary to resolve these conflicts whether or not this legislation is enacted, will never be reached. If this legislation is enacted, Sierra Pacific is equally confident that the requirements of Section 107 can be timely satisfied. Sierra Pacific strongly recommends passage of this Bill.

Thank you for allowing me the opportunity to speak to you on this legislation.

TESTIMONY OF MARCUS G. FAUST REPRESENTING SIERRA PACIFIC POWER COMPANY

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

REGARDING

S. 1558 TO SETTLE CERTAIN CLAIMS
AFFECTING THE PYRAMID LAKE PAIUTE INDIAN
TRIBE OF NEVADA AND FOR OTHER PURPOSES

WASHINGTON, D.C.

OCTOBER 21, 1985

I. INTRODUCTION

Mr. Chairman and members of the Committee my name is Marcus G. Faust. I am an attorney representing Sierra Pacific Power Company. My testimony today is directed to the Bill as it would read if it included the changes sent by representatives of the State of Nevada, Sierra Pacific Power Company, the Truckee-Carson Irrigation District, the Carson-Truckee Water Conservancy District, Washoe County and the Washoe County Water Conservation District to the Nevada Congressional delegation on September 13, 1985. For the convenience of the Committee those changes are shown on Exhibit A attached hereto.

A. Sierra Pacific Power Company.

Sierra Pacific Power Company (Sierra Pacific) is a Nevada corporation and is the successor to The Truckee River General Electric Company. It is a public utility engaged in the purchase, transmission, distribution, and sale of water in the Cities of Reno and Sparks, Nevada, and in portions of Washoe County, Nevada.

It is also engaged in the generation, purchase, transmission, distribution and sale of electric energy in the State of Nevada and California. Sierra Pacific has four hydroelectric facilities on the Truckee River in both Nevada and California. The water used to operate those facilities comes from the Truckee River.

B. Northwest Nevada - The Area Affected By This Legislation.

Northwest Nevada, the area affected by this legislation is an arid region. All facets of life and of the economy in the area are dependent upon the beneficial use of the waters of the Truckee, Carson and Walker Rivers and their tributaries. Literally billions of dollars have been expended on homes, businesses, plants, agriculture, schools, parks, playgrounds and other facilities in reliance on the water provided by those rivers.

All three rivers rise in the Sierra Nevada mountains and flow generally easterly to landlocked termini in the Nevada Desert. The Truckee River flows out of Lake Tahoe and terminates in Pyramid Lake. The Carson River flows through Lahontan Reservoir and terminates in the Carson Sink some 40 miles east of Pyramid Lake. The Walker River consists of two main branches, East and West Walker, which unite in Mason Valley and terminate in Walker Lake.

The waters of each of those rivers have been the subject of comprehensive water adjudications brought by the United States in the United States District Court for the District of Nevada. In 1913 the United States filed an action to determine the relative rights of all parties to the waters of the Truckee River in Nevada. That action, entitled United States v. Orr Water Ditch Co. et al. (Equity No. A-3), was ended with the entry of a final judgment in 1944.

The United States initiated a similar action on the Carson River in 1925. That action, entitled United States v. Alpine Land & Reservoir Co. et al., D-183-BRT was concluded in 1983. See, United States v. Alpine Land & Reservoir Co., 503 F.Supp. 877 (D.Nev. 1980), aff'd 697 F.2d 851 (9th Cir. 1983), cert. den. 104 S.C. 193 (1983).

On July 3, 1924 the United States commenced an action to quiet its title to water on the Walker River and to determine the relative rights of the parties to the suit to the waters of that river. That action, entitled United States v. Walker River Irr. Dist., No. C-125 ended in 1939. See, United States v. Walker River Irrigation District, 11 F.Supp. 158, (D.Nev. 1935); 14 F.Supp. 10 (D.Nev. 1935), aff'd in part and rev'd in part 104 F.2d 334 (9th Cir. 1939).

C. The Continuing Conflict Over Water.

Those comprehensive river adjudications have not ended the conflicts over water. This has been especially true on the Truckee River. For at least the last fifteen years the conflicts on the Truckee have been the subject of extensive study and massive litigation whose final decisions have been inconclusive. Additional litigation is underway and more is anticipated.

In the early 1970's the United States sought leave to file a complaint in the United States Supreme Court pursuant to the Court's original jurisdiction. The proposed complaint which was against the States of California and Nevada, sought a declaration of the respective rights of the states and of the

United States in the Truckee River. The purpose of the United States in seeking to institute that litigation was to perfect a prior water right against all upstream uses that would maintain Pyramid Lake at its then current level and to prevent deterioration of the Lake and the Truckee River, as the habitat for the native fish that had historically thrived in the lake. See United States v. Nevada, 412 U.S. 534 1973. On June 11, 1973 the Supreme Court denied leave to file that complaint.

Thereafter, on December 21, 1973 the United States commenced an action in the United States District Court for the District of Nevada entitled United States of America v. Truckee-Carson Irr. Dist. et al., Civil No. R2987-RCB. That action named approximately 17,000 individuals, the State of Nevada, the Truckee-Carson Irrigation District, the Cities of Reno and Sparks, Nevada, Washoe-County Nevada and Sierra Pacific Power Company as defendants. In that action, the United State claimed an implied, reserved water right with a December 8, 1859 priority date to maintain and preserve Pyramid Lake and the Truckee River as a fishery.

A bifurcated trial on a single affirmative defense began on November 17, 1975 and continued intermittently until May 20, 1976. The trial court issued its decision on December 12, 1977 and an appeal was taken to the Ninth Circuit. The opinion of that court was issued on June 15, 1981 and was amended thereafter on July 10, 1981 and January 5, 1982. See United States v. Truckee-Carson Irr. Dist. 649 F.2d 1286 (9th Cir. 1981) amended 666 F.2d 351 (9th Cir. 1982).

The State of Nevada and the Truckee-Carson Irrigation District petitioned for certiorari and the Pyramid Lake Paiute Tribe cross-petitioned for certiorari. Certiorari was granted by the Supreme Court on October 12, 1982 and the case was argued and submitted on April 27, 1983. On June 24, 1983 the Supreme Court of the United States entered its decision which is Nevada v. United States, 463 U.S. 110 (1983).

The case was remanded to the District Court for further proceedings in conformity with the Supreme Court's opinion. Before that court acted on the remand order, however, the Tribe moved to amend its original complaint. On September 20, 1985, the District Court denied the Tribe's motion to amend and dismissed the Tribe's complaint in its entirety. The case will now proceed on the United States' claim for waters for the [illegible] Stillwater Wildlife Refuge, the Toiyabe National Forest and other waterholes in Nevada.

There have been a number of other related actions which include Pyramid Lake Tribe v. Morton, 354 F.Supp. 252 (D.D.C 1973). There the Tribe challenged the operating criteria for the Newlands Project developed by the Secretary of the Interior. In Truckee-Carson Irrigation District v. Secretary, Civ. No. R-74-34-BRT (D.Nev. 1983), aff'd 742 F.2d 527 (9th Cir. 1984), cert. den. 53 U.S.L.W. 3867 (June 11, 1985), the courts upheld the Secretary of the Interior's decision to terminate the 1926 contract permitting the Truckee-Carson Irrigation District to operate the Newlands project. Another case is *Carson-Truckee Water Conservancy District v. Watt*, 537 F.Supp. 106, 549 F.Supp. 704 (D.Nev. 1982), *aff'd* 741 F.2d 257 (9th Cir. 1984), *cert. den*. 53 U.S.L.W. 368 (March 26, 1985) where the courts upheld the Secretary's decision to utilize water from Stampede Reservoir located on the Little Truckee River in California to increase the spawning flows for the Pyramid Lake fishery.

The Pyramid Lake Paiute Tribe has also filed an action in the United States District Court for the Eastern District of California entitled *Pyramid Lake Paiute Tribe of Indians Plaintiff v. State of California et al., Defendants*, Civil No. S-81-378-RAR. There the Tribe seeks to determine the nature and extent of its reserved water rights relative to the rights of present and future water users in the State of California. There have been a number of other actions and proceedings involving these matters including actions in the Court of Claims and proceedings before the Federal Energy Regulatory Commission.

The costs of this litigation to the parties and to the judicial system has been staggering. Much of the litigation remains unresolved and as noted in Section 101 of this legislation will continue. More importantly, after nearly fifteen years of continuous litigation, a reliable supply of municipal and industrial water for the cities of Reno and Sparks and Washoe County is not assured, the cutthroat trout and cui-ui fish remained listed as threatened and endangered respectively, the manner in which the Newlands Project will be operated remains undetermined and additional inconclusive and expensive litigation is probable.

This Bill should be enacted because it lays a new foundation on which the parties will build a final solution to the long-standing and unresolved conflicts to water from the Truckee River. That foundation has at least five essential elements which are found in Sections 104, 105, 106, 108 and 111 of this legislation. Without enactment of this Bill, any further negotiated resolution of these problems will be impossible.

II. THE FOUNDATION FOR A NEGOTIATED SETTLEMENT

A. Introduction.

The elements necessary to a negotiated settlement of these long-standing problems involve Pyramid Lake and its fishery, the municipal and industrial water supply for the Cities of Reno and Sparks and Washoe County, Nevada, the operation and improvement of the Newlands Project, assurances to the State of Nevada that the wasteful experiences of the past fifteen years will not be repeated on other rivers and the funds and commitment to implement the programs which need to be undertaken. I will touch only briefly on those elements in which the Pyramid Lake Paiute Tribe, the Truckee-Carson Irrigation District and the State of Nevada are most interested. I will consider in some detail the municipal and industrial water supply for the Cities of Reno and Sparks and Washoe County, Nevada. It is that element with which Sierra Pacific is most directly concerned. However, Sierra Pacific has always been concerned with the interests of all of the other parties, including those of Pyramid Lake Paiute Tribe. It has taken the lead in developing a computer model which is used as a tool to analyze various operating criteria for the entire Truckee River. That model has been used to search for ways to meet the needs of all interested parties.

B. The Provisions Of The Legislation Concerning Pyramid Lake.

In Section 104 of this Bill, the United States commits itself to maintaining average levels for Pyramid Lake. That has been one of the objectives sought by the Tribe in much of the litigation described above and is to be used for the enhancement of the Pyramid Lake fish resources, wildlife conservation, outdoor recreation and economic development. In Section 106 of the Bill, the United States commits itself to the formulation and implementation of a program to recover the Lahontan cutthroat trout and cui-ui of Pyramid Lake to the point at which they are no longer classified as endangered or threatened. It commits itself to restore to the "maximum extent practicable" natural spawning of the Lahontan cutthroat trout and cui-ui in the Lower Truckee River. Those too have been objectives of the Tribe in much of the litigation which has taken place to date.

There are other provisions in the Bill pertaining to Pyramid Lake. Suffice it to say that the Pyramid Lake Paiute Tribe may approach the negotiations which will be needed to conclude the conflicts on the Truckee River with the confidence that the United States is committed to protect its Lake and fish resources.

C. The Provisions Of The Legislation Concerning The Municipal Water Supply For The Cities Of Reno And Sparks, Nevada And Washoe County, Nevada.

As the public utility providing water to the Cities of Reno and Sparks, Nevada and to portions of Washoe County, Nevada, Sierra Pacific has a vital interest in making certain that their water supply is reliable now and in the future. Those communities will not have such a water supply without the availability of additional stored water which may be carried over for use during drought periods. In the last ten years the Truckee River annual flows have varied from 35% of normal to over 300% of normal. The 1976-1977 drought experience on the Truckee River illustrates the need for storage to hold water during large runoff years thereby providing water than can be beneficially used during dry years.

The drought of 1976 and 1977 resulted in the level of Lake Tahoe dropping to a low elevation (6223.75 feet) by August 1, 1977. On August 1, 1977 the maximum possible withdrawal of 110 cfs was being made from Lake Tahoe and 280 cfs was being released from Boca Reservoir on the Little Truckee River in California. By the end of August, only 20 cfs could be withdrawn from Lake Tahoe and by mid-September the Lake level had dropped below 6223.0 feet and outflow to the Truckee River ceased.

Boca Reservoir releases were increased to approximately 340 cfs. This release rate exhausted available Boca Reservoir water by mid-September. With no stored water available at Boca

Reservoir or Lake Tahoe to sustain flows, by the end of September there was less than 15 cfs flowing in the Truckee River near Sparks, Nevada.

If the Truckee River system were experiencing today, October, 1985, the hydrologic conditions just described, the Reno-Sparks metropolitan area water supply would be precarious. Truckee River flows would be significantly smaller than the municipal and industrial demand which must be met from river flow. The only remaining municipal and industrial water supply for over 150,000 people would be approximately 12,000 acre feet of stored water from Independence Lake. This quantity of water is only 20% of today's annual demand.

Historically, Lake Tahoe and other reservoirs have been reduced to levels which in about one year in eight will not fully support water rights in Reno, Sparks and Washoe County. Most of these years were concentrated in the early 1930's. It can be expected that such drought conditions will occur in the future with similar frequency.

Engineering studies demonstrate that Truckee River water supplies during drought periods are not adequate to meet existing water rights. Purchased irrigation rights will provide a yield of only 58% of their face amount for municipal and industrial use. Therefore at present a commitment of almost double the water necessary for a development is required in order to protect against a drought. Clearly, then if the Cities of Reno and Sparks and Washoe County, Nevada are to have a reliable water supply now and in the future additional upstream storage must be made available to protect that supply. This Bill will make that possible.

Section 105(b) will allow the Secretary of the Interior, subject to his agreement and the agreement of the Tribe, Sierra Pacific and the Carson-Truckee Conservancy District to execute a contract for the sale of water from Stampede Reservoir in sufficient quantity to provide municipal and industrial water for the cities of Reno and Sparks and Washoe County, Nevada well into the future. As noted, the Reno, Sparks and Washoe County needs are most critical during a dry period. Upon execution of the contract and for ten (10) years thereafter, this legislation allows a dry period municipal and industrial supply based on an average annual withdrawal from Stampede storage of 6,000 acre feet or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific and the Carson-Truckee Conservancy District. The legislation also provides a means for protecting that municipal and industrial supply when Stampede Reservoir storage is at or below 50,000 acre feet or such other amount as is agreed to by the Secretary, Tribe, Sierra Pacific and the Carson-Truckee Water Conservancy District. See, Section 105(c).

The legislation provides that beyond ten years and based upon a projected demand to be defined by the Secretary, the Tribe, Sierra Pacific and the Carson-Truckee Water Conservancy District, the Carson-Truckee Water Conservancy District may withdraw from Stampede storage for municipal and industrial purposes an average of 5,000 acre feet per year or such other amount as is agreed to by the same parties. It will also allow the Carson-Truckee Water Conservancy District a dry period municipal and industrial supply based upon an average annual withdrawal from Stampede storage of 15,000 acre feet or such other amount as agreed to by the respective parties. In addition, the municipal and industrial supply will be protected when Stampede storage is at or below 120,000 acre feet or such other amount as is agreed to by the respective parties. See, Section 105(d).

To the extent that Stampede Reservoir water is not required for the Pyramid Lake fish resources, the Secretary is authorized to execute a contract for the sale of water in addition to the supplies which have been described above. Finally, if the parties agree and storage is available, Sierra Pacific will have the right to accumulate its privately owned stored water in Stampede Reservoir. See, Section 105(e) and (g).

As a further protection to the water supply for the cities, this legislation provides that water made available under subsections (b) through (g) of Section 105 will not be used for the purpose of dilution of sewage effluent. That provision, in Section 105(h), makes it clear that the water provided pursuant to this legislation and the agreements of the parties will be part of the municipal and industrial supply on which the Cities and County may rely.

Section 105(a)(7) also allows the Secretary to withdraw from commercial sale all or any portion of Washoe Project power for any person or entity who becomes a party to the agreements concerning utilization of available reservoir storage referred to in Section 107(a)(6). This provision assures Sierra Pacific that if by agreement it curtails the use of its Truckee River hydroelectric facilities the losses will be offset.

These provisions and others will allow Sierra Pacific and the Carson-Truckee Water Conservancy District to enter the negotiations required by Section 107 with the confidence that legislation is in place which will allow the United States to execute contracts providing for a reliable municipal and industrial water supply for the Cities of Reno and Sparks and Washoe County, Nevada.

D. The Provisions Of The Legislation Concerning The Operation And Improvement Of The Newlands Project.

Section 111 of the legislation provides a forum for determining the operating criteria for the Newlands Project. Section 105(a)(3) allows the Secretary to enter into agreements with the Truckee-Carson Irrigation District for the "rehabilitation, betterment and operational improvement" of the Newlands Project and to include a component for the "improvement of the Stillwater Wildlife Management Area and the Carson Lake Pasture to the extent such improvement is necessary to mitigate fully the effects of the rehabilitation, betterment and operational improvement of the Newlands Project."

The Truckee-Carson Irrigation District is also assured that if any lands or interests are acquired by the United States or that if any of the agreements entered into under this Bill provide for the transfer of Newlands Project water rights to non-Newlands' Project lands or uses, the United States will pay to the Truckee-Carson Irrigation District operation, maintenance and other charges that would have been assessed if the acquisition or transfer had not occurred. See, Section 105(i). Thus, the viability of the Project will continue even if lands and interests are acquired under other provisions of the legislation.

There are other provisions in the Bill which relate to the Newlands Project and the Truckee-Carson Irrigation District. All of the provisions assure the Truckee-Carson Irrigation District that the United States has made a major commitment to the Project and the District and that it may negotiate with that in mind.

E. Provisions In The Legislation Of Concern The State of Nevada.

The State of Nevada is of course concerned with all of the provisions of this Bill, including those which will benefit Pyramid Lake, the Cities of Reno and Sparks and Washoe County and the Newlands Project. However, it has an even broader concern, that of ratification of the California-Nevada Interstate Compact.

The State of Nevada has been a party to much of the litigation described above. If this Bill is enacted and the requirements of Section 107 are satisfied Nevada will contribute $8,000,000 to the Pyramid Lake Settlement Fund and thus to the carrying out of the purposes of Title I of the Bill. It cannot be expected to make that contribution unless it is assured that the experiences and mistakes on the Truckee River over the last fifteen years will not be repeated on the Carson and Walker Rivers.

In order to avoid litigation in the United States Supreme Court Nevada and California have chosen to apportion between them the water of the Truckee, Carson and Walker Rivers by interstate compact. After 13 years of negotiations, the proposed compact was adopted by the State of California in 1970, and by the State of Nevada in 1971. Since 1971, both states have adhered to the provisions of the Compact. *See*, *United States v. Nevada*, 412 U.S. 534, 537-39 (1973).

The major purposes of the Compact are:

> [T]o provide for the equitable apportionment of water between the two states; to promote interstate comity and to further inter-governmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly integrated and comprehensive development, use, conservation, and control of the water within the Lake Tahoe, Truckee River, Carson River and Walker River Basins. California-Nevada Interstate Compact, Art. I.

These are important interests of the State of Nevada and its water users. The State in its testimony presents a more detailed statement of the reasons why the Compact must be adopted as part of this Bill. I will not repeat those reasons here, except to say that I fully support them.

In short, the Compact must be ratified by this Bill. With that ratification Nevada can approach the Section 107 negotiations with the assurance that the experiences on the Truckee River over the past fifteen years will not be repeated on other rivers.

F. The Provisions In The Legislation For Funds, Authorizations And Requirements That Programs Be Implemented.

Section 108 of the Bill creates the Pyramid Lake Settlement Fund and authorizes the appropriation of $21,000,000 to be used to carry-out its purposes. The State of Nevada will provide an additional $8,000,000 for the Settlement Fund. Section 105(a) of the Bill authorizes and directs the Secretary with respect to water management. He is authorized to acquire by purchase from a willing seller private lands or interests having water rights, to enter into water exchange agreements and other agreements, to conduct weather modification programs and other programs to augment the flows of the Truckee and Carson Rivers.

Section 106(b) provides authorization and direction to the Secretary with respect to fish propagation. It authorizes programs designed to facilitate and maintain physical restoration of the Lower Truckee River, modification or replacement of the fishway and facilities at Marble Bluff Dam, construction of additional fish hatcheries and improvements to existing hatcheries on the Pyramid Lake Indian Reservation and such other programs as may be agreed upon by the Tribe and the Secretary and the State of Nevada and other affected parties. The Bill provides significant incentive to the Secretary in the form of monetary penalties to see to it that such programs are implemented in a timely fashion.

These provisions allow all concerned parties to enter the Section 107 negotiations with the knowledge that the funds necessary to implement their agreements are available. They also know that there are significant incentives for the early implementation of the necessary programs.

G. The Exemptions From the National Environmental Policy Act And The Endangered Species Act.

Section 112(a) of the Bill exempts the key elements which form the foundation for settlement and the agreements set forth in section 107 from the requirements of the National Environmental Policy Act and section 112(b) provides that actions taken under sections 104, 105, 106, 107 and 111 "shall be recognized and deemed to be in full compliance with the Endangered Species Act." Those provisions are essential to any final settlement.

No action will be taken under any of the provisions of sections 104, 105, 106 and 111 unless and until the agreements required by section 107 have been reached. Those agreements have as their goal an accommodation among the interests of Pyramid Lake and its fish resources and the water supplies of other major parties. Those agreements will not be reached unless the United States and the Tribe are convinced that the environment and the endangered and threatened species are not only protected but benefited.

The actions to be taken under Sections 104 and 106 have as their goal the recovery of the Lahontan cutthroat trout and cui-ui to the point at which they are no longer classified as endangered or threatened under the Endangered Species Act. Thus, the requirements of that Act must necessarily be satisfied. Similarly, the actions authorized by Section 105 are needed to accomplish the goals of sections 104 and 106 and to facilitate the agreements contemplated by section 107.

There is a short time period allowed for reaching the Section 107 agreements. The duties of the Secretary under Sections 104, 105 and 106 begin as soon as the conditions of Section 107 are satisfied. Thus, time is of the essence. There simply is insufficient time allowed for compliance with the requirements of either act and compliance is not necessary.

Equally important is the fact that the parties who must negotiate the agreements required by Section 107 must be confident that once those agreements are reached they will not be upset by outside interests. They must be assured that third persons relying on obscure legal arguments based upon the National Environmental Policy Act and the Endangered Species Act cannot step in at the last moment and undo a settlement authorized and directed by Congress.

The fact that the Endangered Species Act provides an exemption process (see 16 U.S.C. §1536) does not eliminate the need for the provisions of section 112 of this Bill. First, the provisions of 16 U.S.C. §1536(a)(2) are to insure that the federal government does not undertake actions, such as building a highway, that incidentally jeopardize the existence of endangered or threatened species. It is inapplicable where no project has been undertaken that threatens an endangered species. See, Carson-Truckee Water Conservancy District v. Clark, 741 F.2d 257, 262 (9th Cir. 1984). The actions of the Secretary under the provisions of this Bill are intended to recover the Lahontan cutthroat trout and cui-ui to the point at which they are no longer classified as endangered or threatened. The Secretary cannot take actions under this Bill which would require an exemption from the Endangered Species Act in so far as the trout and cui-ui are concerned.

Second, the exemption process requires compliance with the consultation requirements of the Act, a biological assessment of the species, a hearing on the application and a report from the Secretary. See, 16 U.S.C. §1536(g)(3). That process may consume nearly one year. A decision whether or not to grant the exemption is required within 30 days thereafter. See, U.S.C. §1536(h). The decision is thereafter reviewable in the circuit court of appeals on petition by any person. The petition must be filed within 90 days of the decision. See, 16 U.S.C. §1536(n). There is no time limit for a decision by the courts.

The requirements of this Bill are wholly inconsistent with the purposes of the exemption process. Moreover, compliance with the exemption process is inconsistent with the time constraints in this Bill. Finally, the exemption process may open the door to another round of litigation, even after the parties directly affected have agreed on a settlement and course of action beneficial to the endangered and threatened species with which this Bill is directly concerned.

III. THE NEGOTIATED SETTLEMENT REQUIRED BY SECTION 107 OF THE LEGISLATION.

On the foundation provided by this Bill the parties will "build" the agreements required by Section 107. That section requires an agreement providing for the withdrawal, modification or other appropriate disposition of water rights requested under certain applications before the Nevada State Engineer. A number of actions and proceedings must be dismissed with prejudice or otherwise finally concluded in accordance with an agreement of the parties thereto. The operating criteria for the Newlands Project must be adopted and approved. Sierra Pacific, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe and the Secretary must have executed an agreement providing for utilization of available reservoir storage to best effectuate the Secretary's obligations with respect to the municipal and industrial water supply for the cities of Reno, Sparks and Washoe County and with respect to fish propagation at Pyramid Lake and in the Lower Truckee River. Only after these agreements are reached will the long-standing conflicts be finally resolved.

These agreements will not be reached easily. However, never before has there been the commitment provided by this Bill for significant federal assistance in reaching final solutions to these long-standing conflicts. With the enactment of this legislation, the parties can set out to meet and satisfy the requirements of Section 107 with the confidence that the necessary federal commitment to implement their agreements is in place. Without this legislation, Sierra Pacific is confident that the agreements referred to in Section 107, which are necessary to resolve these conflicts whether or not this legislation is enacted, will never be reached. If this legislation is enacted, Sierra Pacific is equally confident that the requirements of Section 107 can be timely satisfied. Sierra Pacific strongly recommends passage of this Bill.

Thank you for allowing me the opportunity to speak to you on this legislation.

EXHIBIT "A"

TO

TESTIMONY OF JOE L. GREMBAN

Material shown in brackets is deleted. Underlined material is new.

Amend Subsection 102(3) as follows:

(3) the term "Newlands Project" means the project authorized pursuant to the Reclamation act of June 17, 1902 (43 U.S.C. [395] 371 et seq.) for reclamation and irrigation of land in the Carson and Truckee River basins;

Amend Subsection 102(8) as follows:

(8) the term "replacement cost" means [the then current municipal and industrial water rate charged to the Carson Truckee Water Conservancy District by the Secretary pursuant to section 105(b)] the sum of $37.00 per acre foot during the year immediately following the date upon which the Secretary certifies that the conditions of section 107(a) have been satisfied. On each anniversary date thereafter the replacement cost shall be adjusted to reflect the percentage increase which took place the previous year in the metered rate for commercial water service charged by the entity serving the cities of Reno and Sparks, Nevada; and

Amend Subsection 102(9) as follows:

(9) the term "water year" means the period commencing on October 1 of any year and ending on September 30 the following year[s; and].

Delete all of Subsection 102(10) as follows:

[(10) the term "by period" means the period of time that the Truckee River system storage is at reduced levels. The indication of such condition shall be when Lake Tahoe is at or below an elevation of 6225.25 feet, Lake Tahoe DATUM, or such other elevation as agreed to by the Secretary, the Tribe, the Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.]

Amend Section 103(a) as follows:

Sec. 103.(a) Nothing in this [title] Act shall be construed as -

Amend Subsection 103(a)(1) as follows:

(1) modifying or terminating any court decree, except as provided by the provisions in subsections (b) [and (e)] through (h) of section 105 and section 111, including those decrees entered in the following cases:

Amend Subsection 105(a)(3) as follows:

(3) enter into agreement with Truckee-Carson Irrigation District for rehabilitation [and], betterment and operational improvement of the Newlands Project, including the T canal pilot lining project, which shall include a component for the improvement of the Stillwater Wildlife Management Area and the Carson Lake Pasture to the extent such improvement is necessary to mitigate fully the effects of such rehabilitation [and], betterment and operational improvements;

Amend Subsection 105(a)(7) as follows:

(7) after consultation with the Administrator of the Western Area Power Administration (Western), [withdraw from commercial sale all or any portion of Washoe Project power] acquire from the Administrator energy surplus to all contractual obligations of Western for any person or entity who becomes a party to agreements referred to in section 107(a)[(10)](6) if, after such consultation, the Secretary determines that such energy is necessary to offset losses associated with the Truckee River hydroelectric powerplants of such person or entity; or to the extent such losses are not offset, the Secretary shall reimburse such person or entity in the amount necessary to compensate such losses.

Amend Subsection 105(b) as follows:

(b) Notwithstanding any other provision of law and subject to agreement of the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, the Secretary shall execute a perpetual contract for the sale of water from Stampede Reservoir in the quantity set forth in sections 105(c) and 105(d) for municipal and industrial use in the cities of Reno and Sparks and Washoe County, Nevada [and not for the purpose of dilution of sewage effluent].

Amend Subsection 105(d)(1) as follows:

(d)(1) After the ten years provided in subsection (c) and based upon a projected demand buildup period to be defined by the [parties (] Secretary, Tribe, Sierra Pacific Power Company[)], and the Carson-Truckee Water Conservancy District, the Carson-Truckee Water Conservancy District shall have the right to withdraw from Stampede Reservoir storage for municipal and industrial purposes, an average of 5,000 acre feet per year or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

Amend Subsection 105(b)(2) as follows:

(2) The [district] Carson-Truckee Water Conservancy District shall be provided a dry period municipal and industrial supply based on the average annual withdrawal from Stampede Reservoir storage of 15,000 acre feet, or such other amount as agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

Amend Subsection 105(f) as follows:

(f) The allocation of project costs made to municipal and industrial water supply under [paragraphs (1) through (4) of subsection (b)] subsections (b) through (e) of section 105 shall be repayable to the United States in 50 years from the date the conditions of section 107 of this title have been met, under the provisions of the Federal reclamation laws, with right of prepayment, and provided further, that repayment of costs allocated to municipal and industrial water supply shall include interest on the unamortized balance of such allocations at a rate equal to the average rate (which rate shall be certified by the Secretary of the Treasury) paid by the United States on its marketable long term securities outstanding on the date of enactment of the Washoe Project Act (43 U.S.C. 614) and adjusted to the nearest one-eighth of 1 per centum.

Amend Subsection 105(g) as follows:

(g) [Subject] In addition, and subject to the agreement of the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, Sierra Pacific Power Company shall have the right to accumulate [p]Privately [o]Owned [s]Stored

[w]Water, as defined in the Truckee River Agreement in Stampede Reservoir to the extent storage is available. Such waters shall be allocated their proportionate share of evaporation loss and in the event water is required to be spilled from Stampede Reservoir such privately owned stored water shall be spilled prior to any Federal water stored in said reservoir.

Add a new Subsection 105(h) as follows:

(h) The water sold under the provisions of subsection (b) through (g) of section 105 shall not be used for the purpose of dilution of sewage effluent; however nothing herein shall be construed to preclude the use of other water stored in Stampede Reservoir for such dilution purposes.

Reletter the remaining subsections of Section 105 as (i), (j), (k) and (l), respectively.

Amend relettered Subsection 105(k) as follows:

(k) Notwithstanding any other provisions of law, the Secretary is authorized to file [an] applications [with the State Engineer of Nevada] for [a] permits to change the point of diversion, place, means, manner, or purpose of use of any water which the Secretary may acquire under this title.

Amend Subsection 106(a)(1)(A) as follows:

(A) provide such measures as are necessary to [bring] recover the Lahontan cutthroat trout and cui-ui of Pyramid Lake to the point at which they are no longer classified as "endangered" or "threatened" pursuant to the Endangered Species Act (16 U.S.C. 1531, et seq.); and

Amend Subsection 106(b)(2) as follows:

(2) modification and/or replacement of the fishway and fish facilities at Marble Bluff Dam;

Amend Subsection 106(b)(3) as follows:

(3) construction of additional fish hatcheries and improvements to existing hatcheries on the Pyramid Lake Indian Reservation;

Amend Subsection 106(d) as follows:

(d) For the purposes of [section] subsection 106(a)(2)(B), a hatchery is federally supported if moneys appropriated by Congress were or are used to pay, in whole or in part, for its construction.

Amend Subsection 106(e) as follows:

(e) The Secretary shall [upon agreement with the Tribe] undertake such biological studies as are agreed to by the Tribe to determine the flow requirements in the Lower Truckee River for the Pyramid Lake fish resources.

Amend Subsection 107(a)(1) as follows:

(1) Sierra Pacific Power Company, [and] Washoe County, [Nevada,] the Tribe and the Secretary have executed an agreement [with the United States and the Tribe] providing for the withdrawal, modification, or other appropriate disposition of the water rights requested under application Nos. 47047, 47121, 47209, and 47264 [pending] before the State Engineer of Nevada for permits to appropriate waters of the Truckee River;

Amend Subsection 107(a)(4) through (9) as follows:

(4) The following actions or proceedings are dismissed with prejudice or otherwise finally concluded in accordance with the agreement of the parties thereto:

[(4)] (A) Pyramid Lake Paiute Tribe v. California, Civ. S-81-378-RAR, United States District Court, Eastern District of California [is dismissed with prejudice];

[(5)] (B) United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada, including those matters asserted in the Tribe's proposed amended complaint [is dismissed with prejudice];

[(6)] (C) the Tribe's appeal in United States v. Orr Water Ditch Co., No. 85-1880, Ninth Circuit Court of Appeals [is dismissed with prejudice];

[(7)] (D) the Tribe's and the Secretary's appeals from the State Engineer's ruling in United States v. Orr Water Ditch Co., Equity A 3-WEC, United States

District Court, District of Nevada, and United States v. Alpine Land & Reservoir Co., D-183-BRT, in the United States District Court for the District of Nevada, granting the applications to transfer Newlands Project water rights to other Newlands Project lands [are dismissed with prejudice];

[(8)](E) Pyramid Lake Paiute Tribe of Indians v. [Clark] Hodel No. R-85-197-BRT. United States District Court for the District of Nevada [is dismissed with prejudice]; provided, however that any final disposition of this action other than a dismissal with prejudice shall require the agreement of the Truckee-Carson Irrigation District; and

[(9)](F) Truckee-Carson Irrigation District v. United States, No. 512-7 (Ct. Cl.) [is dismissed with prejudice].

Renumber Subsections 107(a)(10) through (12) as Subsections (5) through (7), respectively.

Amend renumbered Subsection 107(a)(5) as follows:

[(10)](5) the operating criteria has been agreed upon, adopted and approved as provided in section 111; [and]

Amend renumbered Subsection 107(a)(6) as follows:

[(11)](6) Sierra Pacific Power Company, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe, and the Secretary have executed an agreement (and, if necessary, [ratified such agreement by a court having] obtained ratification of such agreement from a court of competent jurisdiction) providing for utilization of available reservoir storage to best effectuate the Secretary's obligations under [section 106(a)(1) and under sections 105] subsections (b), (c), (d), and [(e)] (g) of section 105 and section 106(a)(1); and

Amend renumbered Subsection 107(a)(7) as follows:

[(12)](7) all pending motions filed by the Tribe in Doc. No. E-9530 before the Federal Energy [Regulation] Regulatory Commission, have been withdrawn.

Amend Subsection 107(b)(1) as follows:

(b)(1) Subject to the provisions of paragraph (2) and except as provided in subsection[s] (g) [and (h)] of section 108 and section 109(e), all the conditions of section 107(a) shall be accomplished within one year from the date of the enactment of this title or this Act shall terminate and shall be of no further force or effect.

Amend Subsection 108(f) as follows:

(f) In the event the Secretary fails to obligate the sum of $16,000,000 to implement the fish enhancement program required by section 106(a)(1) within five years after the date upon which the conditions of section 107 have been met, or within such additional period as may be agreed upon the Secretary and the Tribe, the amount representing the difference between $16,000,000 and the amount obligated, [shall be forfeited to the Tribe] together with the interest thereon, shall be paid and credited to the Tribal Trust Fund established by section 109 of this title.

Amend Subsection 109(c) as follows:

(c) Except as provided in subsection (b) with respect to the amounts credited to the tribal trust fund under section 108(f), principal and income from the tribal trust fund may be used for capital expenditures relating to the economic development of the [reservation] Pyramid Lake Indian Reservation. Income from the tribal trust fund may be used for operating expenses associated with economic development of the Tribe or tribal administrative purposes.

Amend Subsection 110(b)(2) as follows:

(2) The damages provided for in this section shall not exceed in any one year the sum of $5,000,000 for damages for the failure to meet the requirements of section 104(a) and the sum of $2,000,000 for damages for the failure to meet the requirements of section 104(b) or such lesser amount as may be agreed to by the governing body of the Tribe. Provided that beginning on October 1, 1989, and annually thereafter, the sums set forth in this subsection shall be adjusted annually to reflect the increase in the consumer price index for the previous twelve month period.

Amend Subsection 111(a) as follows:

THE NEWLANDS RECLAMATION PROJECT

SEC. 111.(a) Notwithstanding any other provision of law, all repayment obligations [for irrigation construction costs] owing to the United States or one of its agencies by the Truckee-Carson Irrigation District shall be canceled by the Secretary and the Secretary shall at the request of the District issue a certificate acknowledging that the lands in the District are free of the acreage and ownership and full cost pricing provisions of Federal Reclamation law provided that Truckee-Carson Irrigation District shall have the right to collect all unpaid construction costs. Such certificate shall be in a form suitable for entry in the land records of Churchill County and Lyon County, Nevada.

Delete all of Section 112 as follows:

[SEC. 112. No authority under this title to enter in contracts or to make payments shall be effective except the extent and in such amounts as provided in advance appropriation Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985.]

Renumber Sections 113 and 114 as Sections 112 and 113, respectively.

Amend renumbered Section 112 as follows:

SEC. 11[3]2. (a) All actions taken by the Secretary pursuant to sections 104, 105, 106, 107, and 111 of this title shall be exempt from the requirements of the National Environmental Policy Act (42 U.S.C. 4321, et seq.).

(b)[(1)] Subject to the provisions of [paragraph (2)] subsection (c), actions under sections 104, 105, 106, 107, and 111 shall be recognized and deemed to be in full compliance with the Endangered Species Act (16[5] U.S.C. 1531, et,seq.) with respect to the Pyramid Lake fish resources and may be taken without regard to the requirements of the Act.

[(2)](c) Nothing in this [subsection] Act shall be deemed to prevent the [Secretary from, in his discretion,] seeking of further appropriations for the purpose of constructing or modifying facilities or structures to enhance the Pyramid Lake fish resources.

(d) Nothing in this Act shall be deemed to exempt the Secretary or any other Federal agency from the requirements of the National Environmental Policy Act or the Endangered Species Act with regard to other programs or actions.

Amend Section 201 as follows:

SEC. 201. The consent and approval of Congress is given to the [Congressional Consent] California-Nevada Interstate Compact between the States of California and Nevada. Such compact reads as follows:

Amend Section 202 as follows:

SEC. 202. [The right to alter, amend, or repeal this title is expressly reserved.] The following provisions of the foregoing Compact shall be binding on the agencies, wards and instrumentalities of the United States of America:

Article V, Section D
Article V, Section F
Article VI, Subsection B.1
Article VI, Subsection B.3
Article VI, Subsection B.4
Article VI, Section D
Article VII, Section A
Article VII, Section B
Article VII, Section C
Article VII, Section D
Article VII, Section E
Article VIII, Subsection A.4(b)
Article VIII, Subsection B.1
Article VIII, Subsection B.5

Amend Section 203 as follows:

SEC. 203. The consent granted by this title shall take effect on the date the Secretary [of the Interior] certifies that the conditions of section 107(a) have been satisfied.

Senator WALLOP. Thank you, Mr. Faust.

Senator Hecht, do you have any questions?

Senator HECHT. None for the moment, but go on, and I will be right with you.

Senator WALLOP. That's a very good statement. It virtually answered all the questions that we had prepared.

A passing observation is, it would be strange indeed if lawyers in pursuit of survival of the species were the ones who dried up opportunity for that species to survive.

It sounds to me very much like that could be the case. When you have people all set with the means by which a variety of experts have focused their efforts on survival in hand and ready to go, that all of those would be stopped for 3, 5, 9, or 10 years while power was satisfied and the poor old fish might go the way of a number of other species. So it would be my hope that the statements that you and others have made as to your commitment—and not only the commitment, but you've laid down the tools by which you expect to achieve that commitment—would be heard, and the desire of others would be perhaps suppressed in the interest of achieving what everybody would give lipservice to, and that is the survival of the species.

We have witnessed those delays not only adding to the expense of the survival of the species, but really complicating the job of assuring that survival.

It just seems to me that once in a while we should recognize what has been done.

I can say, for certainty, that it is no small gesture for somebody to waive water rights to which they are entitled, especially in the drier parts of the dry West. This is rather an extraordinary gesture. I can see that it benefits the Pyramid Lake Paiutes. I can see its benefits to the survival of that species. I can see its benefits to Sierra Pacific because, if the species does, in fact, survive, a great deal more flexibility emerges out the other end. But that seems to me to be in everybody's interest, and can't be diminished.

Let me just ask you one question.

If the settlement agreement does not go through, would Sierra Pacific be able to meet its obligation as a regulated utility to serve both the water and power needs of the residents of Washoe County and Reno and Sparks?

Mr. FAUST. There is serious concern with respect to the timing of our ability to find replacement and storage in the event that we are unable to use the Stampede Reservoir.

There have been and are ongoing studies within the water department of various options, which include even interbasin transfer of water. You appreciate what that entails.

We hope to be able to do that, but I cannot, with assurance, tell you that we will not be forced to place additional moratoria on water service connection in growing areas of Reno-Sparks, which is one of the fastest growing areas of the country, and we are unable to determine how many people move into the area. We cannot control that. All we can do is indicate that within the limits of our capability, we will do our very best to supply, under the mandate that we have been given as the regulated utility, the water needs of the Reno-Sparks and Washoe County area.

Senator HECHT. Mr. Chairman, excuse me. I am going to have to leave in a moment.

But this was handed to me and is something that I think should be a matter of the record.

The Nevada Wildlife Federation has written me of their concerns on this bill, and that letter expressed no concern about how the bill addresses the Endangered Species Act or the National Environmental Policy Act. This was not brought out in the House hearing, and I did want it to be a part of the record.

And I thank you again for holding these hearings.

Senator WALLOP. Will you make that letter available for the record?

Senator HECHT. Yes; it will be a part of the record.

Thank you very much.

[The letter referred to follows:]

NEVADA WILDLIFE FEDERATION, INC.
An Affiliate of the National Wildlife Federation
820 EAST SAHARA AVENUE / LAS VEGAS, NEVADA 89104

September 26, 1985

Ref: S 1558

Honorable Chic Hecht, U.S. Senator
302 Hart Building
Washington, D.C. 20510

Dear Senator Hecht:

The Nevada Wildlife Federation, an affiliate of the National Wildlife Federation, has over the years attempted to keep informed on the efforts to resolve the conflicts on the use of Truckee River water and the Newlands Project. In fact the National Wildlife Federation in annual meeting, Atlanta Georgia, 1984 adopted resolution 30 expressing concern over the language of the then proposed Settlement Act and suggested points to consider in regard to the Lahontan Valley wetlands.

We are not opposed to the attempts to resolve the issues, however, we cannot support S 1558, "The Pyramid Lake Paiute and Truckee River Settlement Act of 1985", as presently written. We have serious concern over what we consider to be a grave weakness in the bill; namely, lack of attention to the wetlands of Lahontan Valley.

It is our impression that attempts on the part of the State of Nevada and the Truckee Carson Irrigation District (TCID) negotiators to include provisions to protect those wetlands commensurate with their public value have been rebuffed by the other negotiators. That was our concern in 1984, generating resolution 30, and that is our concern today. While the Act at present, at the insistence of the State and TCID, does include under Section 105, Water Management subsection 3, provisions for mitigating the effects of a rehabilitation and betterment program in the Newlands Project that the Secretary may undertake, we do not feel this is sufficient nor does it consider the effect of project operating criteria. We suggest that Congress incorporate in the Act a recognition of the wetland values to impress upon those who implement the Act and those who develop the operating criteria, that their results must reflect Congressional findings.

To accomplish this we respectfully suggest the following brief amendments:

Amend Sec. 101 - Congress finds that - (add a new 9 and 10 at the end of Sec. 101)

"(9) . . . the wetlands of Lahontan Valley and the Fernley Sink area are significantly important to migratory birds in the Pacific Flyway and that the Lahontan Valley wetlands support 75% of Nevada's waterfowl use days

(10) . . . in carrying out the purposes of this act, adverse impacts to Lahontan Valley wetland habitat will be mitigated."

CONSERVE OUR NATURAL RESOURCES

Language such as this would, we feel, leave a Congressional trail recognizing the value of those wetlands, and inform waterfowl hunters, bird watchers, and other concerned citizens that the United States recognizes its Public Trust Responsibility over these wetland resources in addition to the Secretary of Interior's already mandated responsibilities which are not now reflected in this Act.

One additional amendment is suggested for Sec. 102, Definitions:

Add a new definition (11) at the end of Sec. 102, "the term 'mitigation' means to secure water rights, land, structures and the funding necessary to replace wetland productivity lost due to this Act."

This amendment would compliment and strengthen the mitigation provisions of Sec. 105 mentioned above.

In essence, Senator Hecht, we feel the bill as written needs these suggested amendments to be acceptable to the interests we represent. The wetlands are historical recipients of water just as is Pyramid Lake and we support the concern demonstrated in the Act over the Truckee River-Pyramid Lake fisheries. The wetlands contribute to the economy of western Nevada and the recreational opportunities of residents and nonresidents alike. Migratory birds have lost the use of Winnemucca Lake National Wildlife Refuge and we would not like to see any further degrading of Nevada's limited wetlands.

In light of the current downward trend in the continental duck populations we do not need added wetland losses to contribute to this trend, therefore, it is incumbent upon someone to correct the weakness in the proposed Act. We see Congress as the only body in a position to strengthen this proposal.

Thank you for your consideration.

Sincerely,
Dr. John Leitch, President
By,

Fred E Wright
Fred E. Wright,
Legislative Representative

FEW/rj

Senator **Wallop**. I appreciate that.

I would make one last observation. One of the species to which I hope people will pay some attention is the human species, around whom some of these decisions swirl and for whose environment there are consequences as well.

I appreciate very much your quite articulate statement on this issue as it relates to water, water use, water management, and the survival of the species.

Thank you very much.

This subcommittee stands adjourned.

[Whereupon, at 11:28 a.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT BY THE HONORABLE NORMAN D. SHUMWAY (R.-CALIF.) BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE HEARING ON S. 1558: MONDAY, OCTOBER 21, 1985

MR. CHAIRMAN, I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOUR COMMITTEE TODAY TO TESTIFY ON S. 1558, A BILL WHICH SEEKS TO: 1) SETTLE DISCREPANCIES REGARDING THE WATER USES OF THE TRUCKEE RIVER BASIN; 2) GUARD AGAINST THE NEGATIVE EFFECTS OF THOSE WATER USES ON PYRAMID LAKE, THE PAIUTE INDIAN TRIBE, AND THE ENDANGERED LAHONTON CUTTHROAT AND THE CUI-UI FISHERIES; AND 3) IMPLEMENT THE CALIFORNIA - NEVADA INTERSTATE COMPACT.

WHILE THE MAJORITY OF THE PROVISIONS IN TITLE I OF THE BILL DEAL DIRECTLY WITH NEVADA WATER USERS, POWER INTERESTS AND NEVADA STATE POLITICAL SUBDIVISIONS, THE STATE OF CALIFORNIA, WHERE THE TRUCKEE RIVER SYSTEM ORIGINATES, CERTAINLY HAS A DEEP INTEREST IN THE POTENTIAL EFFECT OF S. 1558. CERTAINLY, THE CALIFORNIA COUNTIES OF SIERRA, NEVADA, PLACER, AND EL DORADO WHICH I REPRESENT HAVE A VESTED INTEREST INASMUCH AS THE POTENTIAL EFFECT IS A DIRECT ONE. I WILL RESTRICT MY TESTIMONY, THEN, TO THOSE SPECIFIC EFFECTS ON CALIFORNIA, AND TO SOME OF THE CONCERNS WHICH THEY GIVE RISE TO.

THE FIRST THREE OF THESE CONCERNS ARE INTERRELATED AND, AS SUCH, CAN ALL BE REMEDIED, OR AT LEAST CONTROLLED, SIMPLY THROUGH INCREASED OPERATIONAL FLEXIBILITY IN THE TRUCKEE RIVER SYSTEM.

SPECIFICALLY, BY SIMPLY ALLOWING FOR SEASONAL WATER EXCHANGES BETWEEN LAKE TAHOE RELEASES INTO THE TRUCKEE AND STAMPEDE RESERVOIR RELEASES, WE WILL BE ADDRESSING SERIOUS SHORELINE EROSION AND WATER QUALITY CONTROL PROBLEMS AT LAKE TAHOE; DEGRADATION OF THE TROPHY FISHERIES, AND THE STREAMBED, DIRECTLY BELOW THE STAMPEDE RESERVOIR; AND DECREASED RECREATIONAL USES OF THE STAMPEDE RESERVOIR FACILITY.

SHORELINE EROSION

IN UNDERSTANDING THE SERIOUS SHORELINE EROSION PROBLEM AT LAKE TAHOE, AND THE RELATED WATER QUALITY PROBLEM, IT IS SIGNIFICANT TO NOTE THAT VIRTUALLY ALL OF THE EROSION OCCURS WHEN THE LAKE IS WITHIN ONE FOOT OF THE MAXIMUM LEGAL LIMIT OF 6229.1 FEET, AND 70% OF THAT DAMAGE OCCURS WHEN THE LAKE IS WITHIN SIX INCHES OF THE MAXIMUM. DESPITE THESE FACTS, THE OFFICIAL OPERATING POLICY FOR LAKE TAHOE RELEASES AS PRESCRIBED IN THE ORR-DITCH DECREE OF 1944 IS TO KEEP LAKE TAHOE AS HIGH AS POSSIBLE IN ANTICIPATION OF A PROLONGED DROUGHT.

HISTORICALLY, LAKE TAHOE REACHES ITS HIGHEST ANNUAL ELEVATION IN LATE JUNE OR JULY, AFTER SPRING RUN-OFF HAS PEAKED. THERE ARE DEVIATIONS TO THE NORMAL SEASONAL PATTERNS, HOWEVER, WHICH CAUSE THE LAKE TO RISE DRAMATICALLY. FAILURE TO ACCOUNT FOR THESE DRAMATIC INCREASES BY MAKING CORRESPONDING WATER RELEASES IS THE ROOT OF OUR LAKE'S SHORELINE AND WATER QUALITY PROBLEM. FOR EXAMPLE, IN NOVEMBER OF 1983, A SEVERE STORM HIT THE LAKE TAHOE

Basin. The level of the Lake increased to only four inches below the maximum legal elevation. The high winds drove large waves onto the shoreline, resulting in extreme erosion of soils around the Lake. In addition to the high sediment load discharged into the Lake during the storm causing water quality problems, the erosion undermined building foundations, sewerlines, and sewer manholes near the shoreline. This particular erosion problem continued to be significant during the following months until the elevation of the Lake was reduced.

Subsequent to this incident in 1983, the Lahonton Regional Water Quality Control Board studied the problem, documenting the erosion and recommending that it be addressed. One of the Regional Board's recommendations was to request the downstream agencies and interested parties - the Washoe County Water Conservation District, the Sierra Pacific Power Company, the Truckee-Carson Irrigation District, and the United States - to renegotiate their agreement regarding operational criteria of Lake Tahoe to reduce shoreline erosion. Since section 107(a)(11) of the bill before the committee today calls for an overall water management plan for the Truckee River system to improve reservoir operations as a prerequisite to the Act taking effect, it is my hope that criteria regarding Lake Tahoe shoreline erosion could be included in those negotiations. However, the parties involved in the negotiations, as the bill is presently drafted, do not include any California interests, either at the state or local level. Inclusion of both the state and the Lake Tahoe Resource

CONSERVATION DISTRICT IS BOTH APPROPRIATE AND NEEDED TO ADDRESS THIS SERIOUS PROBLEM.

TROPHY FISHERIES AND RECREATIONAL USES AT STAMPEDE

THE NINTH CIRCUIT COURT DECIDED THAT THE WATER USED IN STAMPEDE RESERVOIR IS TO BE USED ENTIRELY FOR THE PROTECTION OF THE ENDANGERED LAHONTON CUTTHROAT AND CUI-UI, WHICH LIVE IN PYRAMID LAKE AND THE LOWER TRUCKEE RIVER. HIGH FLOWS IN THE TRUCKEE RIVER ARE REQUIRED FOR THE FISH DURING MARCH, APRIL, MAY, AND JUNE, AND ARE GENERATED BY LARGE RELEASES FROM THE STAMPEDE RESERVOIR. THESE LARGE RELEASES WASH OUT THE TROHPY FISHERY THAT EXISTS DOWNSTREAM FROM STAMPEDE RESERVOIR AND UPSTREAM FROM BOCA RESERVOIR. THE CALIFORNIA DEPARTMENT OF FISH AND GAME HAVE FOUND THAT MANY OF THE FISH DO NOT RETURN TO THE STREAM SECTION FROM BOCA RESERVOIR ONCE THE HIGH FLOWS SUBSIDE, THUS WIPING OUT AN IMPORTANT FISHERY IN THAT AREA.

ADDITIONALLY, THE HIGH FLOWS HAVE WASHED OUT MUCH OF THE STREAMBED, WHICH HAS REQUIRED THE U.S. FOREST SERVICE TO RECONSTRUCT THE STREAM CHANNEL WITH EXTREMELY LARGE BOULDERS THAT WILL RESIST THE MOMENTUM OF THE HIGH STREAM FLOWS AND PROVIDE SOME POOLS TO PROTECT THE FISH IN THE STREAM SECTION. ALTHOUGH THE U.S. FOREST SERVICE IMPROVEMENTS HAVE HELPED, THEY HAVE NOT BEEN ENTIRELY SUCCESSFUL.

In this area, the U.S. Forest Service has also spent $2.3 million on recreational facilities at Stampede Reservoir. During dry and moderate years, the large releases from Stampede Reservoir drain the Reservoir to a degree that greatly impairs the use of these facilities.

All three of these problems - the trophy fishery degradation, the streambed degradation and the loss of recreational uses at Stampede - along with the shoreline erosion problem at Lake Tahoe, could be addressed by allowing Lake Tahoe water, where feasible, to be exchanged for Stampede Reservoir releases. Such water exchanges would have no real effect on the downstream Nevada water users, the Pyramid Lake Indians, or the endangered fisheries. As such, it is entirely consistent with the purposes of Title I of S. 1558 and could be accomplished through the water management plan as described in section 107 of the bill, provided the State of California and the affected California local entities have input into the operational agreements of the various reservoirs.

One other concern which I would like to express to the committee today deals with Section 105(a)(5) of S. 1558 which authorizes the Secretary of the Interior to conduct weather modification programs to enhance the flows of the Truckee River system.

THE LIKELY RESULT OF SUCH WEATHER MODIFICATION PROGRAMS WOULD BE MORE SNOWFALL DURING THE WINTER MONTHS FOR THE SIERRA - NEVADA MOUNTAIN AREAS OF CALIFORNIA. SPECIFICALLY, FOUR COUNTIES WHICH I REPRESENT HAVE EXPRESSED CONCERN TO ME THAT ENACTMENT OF THIS BILL WILL NEGATIVELY IMPACT THE ENVIRONMENT AND ECONOMIES OF THEIR REGIONS. FOR A REGION WHICH DEPENDS ON TOURISM GENERATED BY SOME OF THE WORLD'S FINEST AND LARGEST WINTER RECREATIONAL RESORTS, SUCH AN IMPACT COULD BE SEVERE. SNOW REMOVAL IS AN IMPORTANT FUNCTION OF THE VARIOUS LOCAL COUNTY GOVERNMENTS AND, CORRESPONDINGLY, IT IS ONE OF THE LARGEST SINGLE EXPENDITURES INCURRED BY THESE COUNTIES. AS A RESULT, ANY AUTHORIZATION FOR PROGRAMS WHICH MIGHT INCREASE THE NEED FOR COSTLY SNOW REMOVAL BY AFFECTED COUNTIES SHOULD ALSO AUTHORIZE FUNDING TO OFFSET SUCH AN EXPENDITURE AND MITIGATE FOR ANY OTHER NEGATIVE IMPACTS. I WOULD LIKE TO SUBMIT FOR THE RECORD A COPY OF A LETTER FROM THE NEVADA COUNTY BOARD OF SUPERVISORS WHICH INDICATES MORE FULLY THEIR CONCERN AND DETAILS THEIR COUNTY SNOW REMOVAL BUDGET.

I WOULD LIKE TO STRESS, IN SUMMARY, THAT THE CONCERNS, WITH REGARD TO S. 1558, OF THE CALIFORNIANS WHICH I REPRESENT ARE NOT COUNTER TO THE OBJECTIVES OF THE BILL. IN FACT, THEY ARE MADE IN THE SAME SPIRIT AS HAS BEEN DISPLAYED IN DEVELOPING TITLE II OF THIS LEGISLATION -- THE CALIFORNIA - NEVADA INTERSTATE COMPACT. IF GIVEN THE CHANCE, I AM CERTAIN THAT WE CAN SATISFACTORILY ACCOUNT FOR THE OVERRIDING CONCERNS OF BOTH CALIFORNIA AND NEVADA INTERESTS. AS A RESULT, I LOOK FORWARD TO WORKING WITH THE MEMBERS OF THIS COMMITTEE ON THESE IMPORTANT MATTERS.

# # # # # #

NDS:LFD

STATE OF CALIFORNIA—THE RESOURCES AGENCY
GEORGE DEUKMEJIAN, *Governor*

DEPARTMENT OF WATER RESOURCES
P.O. BOX 388
SACRAMENTO, CA 95802

OCT 18 1985

Honorable Malcolm Wallop, Chairman
Subcommittee on Public Lands,
Reserved Water, and Resource Conservation
Senate Committee on Energy and Natural Resources
206 Senate Russell Office Building
Washington, DC 20510

Dear Senator Wallop:

I am pleased to submit a written statement on behalf of the State of California on S. 1558, for inclusion in the printed transcript of your Committee's hearing on October 21, 1985. While the statement identifies several concerns we wish to see addressed in amendments to the bill or in its legislative history, we support the bill because it will allow the California-Nevada Interstate Compact to go into effect.

The California-Nevada Interstate Compact allocates the interstate waters of Lake Tahoe and the Truckee, Carson, and Walker Rivers. As the demand for these waters increases, the need for an equitable apportionment becomes more urgent. The Compact was ratified by the Legislature of California in 1970 and by the Legislature of Nevada in 1971. To date, the Congress of the United States has not provided its consent to the Compact. While this consent has been pending, the water rights administrators of both states have complied voluntarily with the Compact's allocations. We need now the certainty which the Compact provides for these important interstate waters.

If you or any members of the Committee or its staff have any questions, please do not hesitate to contact me at (916) 445-6582.

Sincerely,

David N. Kennedy
Director

Enclosure

cc: Honorable Alan Cranston
Honorable Pete Wilson
Raymond Stone, Chairman
State Water Resources Control Board

STATEMENT OF THE STATE OF CALIFORNIA IN SUPPORT OF S. 1558

I. INTRODUCTION

I am pleased to present California's position for the record on S. 1558. This bill would provide the framework for settlement of long-standing water rights disputes on the lower Truckee River. It would also provide for the consent of Congress to the California-Nevada Interstate Compact, once the remaining elements of the Truckee River settlement are resolved.

S. 1558 would have two major benefits to California. First, it would provide for the dismissal of a suit brought by the Pyramid Lake Paiute Tribe of Indians against the State of California and major holders of California water rights to the Truckee River. This suit has placed a cloud on the State's administration of water rights in the Tahoe and Truckee River Basins. Second, and most important to California, S. 1558 would provide for the consent of Congress to the California-Nevada Interstate Compact, when certain conditions of the Truckee River settlement are satisfied. This Compact is the product of nearly 13 years of negotiations between the states, and it was ratified by the Legislatures of California and Nevada in 1970 and 1971, respectively. The Compact makes an equitable apportionment of the waters of the Lake Tahoe Basin and the Truckee, Carson and Walker River Basins to the two states. While the consent of Congress to the Compact has been pending for close to 15 years, the water rights administrators of the two states have complied voluntarily with the Compact's allocations. We feel that the Compact's terms are equitable and that it should receive the consent of Congress without further delay.

We have identified several concerns with the present text of S. 1558, but those concerns may be easily remedied by amendments or legislative history. They are discussed in Parts IV. and V. of this statement. Assuming that those concerns are addressed, we support S. 1558 and urge favorable action by this committee.

II. THE CALIFORNIA-NEVADA INTERSTATE COMPACT

In 1955, the states of California and Nevada decided to negotiate an interstate compact to provide an equitable apportionment of their interstate waters. They recognized that this was required to avoid future controversies as demands increased in both states for the use of very limited water supplies. In the Lake Tahoe and Truckee River basins, for example, Nevada water users were

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Statement of David N. Kennedy, Director of the California Department of Water Resources submitted for the record at the hearing of the United States Senate Committee on Energy and Natural Resources on S. 1558, October 21, 1985.

increasingly protesting California water rights applications. In these basins, as well as the Carson and Walker River basins, the states wished to provide for satisfaction of existing water rights and to address new uses of water. The states determined that entering into interstate compact was the best way to resolve immediate problems and provide a basis for orderly resolution of future controversies. The governor of each state appointed commissions which met for 13 years to negotiate the Compact.

The Compact allocates sufficient water to each state to provide for decreed rights and existing beneficial uses, together with additional amounts deemed equitable within each of the basins. These waters are allocated to each state and not to individual users. Each state has jurisdiction to determine under its own laws the rights to beneficial use of water within limits set by the Compact.

In the Lake Tahoe Basin, where an average of about 140,000 acre-feet of water annually flows from the lake into Truckee River, 34,000 acre-feet per year is reserved for present and future use within the Basin: 23,000 acre-feet per year of this is allocated for use in California and 11,000 acre-feet per year is allocated to Nevada. This is in about the same ratio as the acreage of land within each state in the Basin. The compact limitations are based on all diversions from surface and ground waters.

In the Truckee River Basin below Lake Tahoe, where approximately 480,000 acre-feet annually flows from the upstream area in California including Lake Tahoe into Nevada, 10,000 acre-feet of water is allocated to California with the remainder allocated to Nevada. In addition, 6,000 acre-feet of conservation yield of the Bureau of Reclamation's Stampede Reservoir is allocated to California, upon execution of a contract with the United States.

In the Carson River Basin approximately 300,000 acre-feet of water annually now enters Nevada from California. The Compact reserves water to California for its existing beneficial uses, together with approximately 20 percent of the unused waters. The remainder is allocated for use in Nevada.

In the Walker River Basin, another 300,000 acre-feet of water per year on the average flows from the upstream watershed in California into Nevada. Of this amount, California will be permitted to use sufficient water for its established present needs plus about 35 percent of the unused flow. Nevada is allocated the remainder.

In addition to the allocation of quantities of water, the compact contains provisions which: (1) establish a permanent commission to administer the terms of the Compact; (2) recognize the use of water for the preservation, protection, and enhancement of fish, wildlife, and recreation; (3) permit the change of manner, purpose, or place of use of the allocated waters; and (4) cover all other factors deemed necessary to insure each state its equitable share of a common water supply.

III. ADMINISTRATION OF WATER RIGHTS IN THE LAKE TAHOE BASIN: AN EXAMPLE OF NEED FOR THE COMPACT

In the Lake Tahoe Basin, the surface and groundwater systems are interconnected and the Compact allocations include all diversions from all sources within the Basin. Under California law, the State Water Resources Control Board (State Water Board) has permit jurisdiction over surface appropriations. No State permit is required for extractions and use of ground water, riparian diversions, and certain surface appropriations initiated before 1914.

Following adoption of the Compact by the California Legislature in 1970, the State Water Board formulated a policy for administration of water rights in the Lake Tahoe Basin. The policy was adopted by the Board on March 16, 1972. The purpose of this policy, together with the State Board's ongoing analysis and policy evaluation is to assure that California will stay within the Compact's Lake Tahoe allocation.

The Policy limits issuance of new water rights permits so that their face value, together with all other uses of water, including ground water does not exceed 23,000 acre-feet per year. Permit applications in excess of this amount are not approved, but the applicant may maintain the priority of the application until such time as water may become available. The policy also places restrictions on the initial time to put water to beneficial use under a permit and the amount of extensions of this time that may be granted. Since 1972, with few exceptions, the State Board has not approved new permit applications in the Lake Tahoe Basin. The State Board has continued to collect information on existing and projected uses of water in the basin. Its staff is currently evaluating a revision to the 1972 policy.

Simply stated, the Board's Tahoe policy has implemented the Compact. This policy has always been considered a necessary interim arrangement. Ultimately, the State must act on the pending applications, but it must do so with the certainty of an equitable apportionment of those interstate waters. Although an equitable apportionment could be achieved ultimately through protracted and costly litigation, the Compact, as adopted by the Legislatures of both states, represents a more orderly and reasonable apportionment of these waters. As the demand for water increases, the need for certainty becomes more urgent; the consent of Congress is needed now.

IV. SPECIFIC RECOMMENDATIONS AND COMMENTS ON TITLE I OF S. 1558

As I noted in the introduction to this statement, California has several concerns with the present text of Title I of S. 1558. My staff has discussed our concerns informally with representatives of the state of Nevada and the Bureau of Reclamation in Sacramento. Some of our concerns can be addressed in legislative history; others would be more appropriately addressed by amendment to Title I of S. 1558. These amendments are attached to this statement. California's concerns which require amendments include the following:

1. California's allocation of yield from Stampede Reservoir

Article VI B 3 of the Compact allocates to California 6000 acre-feet per year from the conservation yield of Stampede Reservoir, subject to the execution of a contract with the United States. Section 105 of S. 1558 would mandate the Secretary of the Interior to enter into certain perpetual water supply contracts with the Carson-Truckee Water Conservancy District. In addition, it would authorize the storage of privately owned water in Stampede Reservoir. California's 6000 acre-feet allocation in Stampede Reservoir should also be recognized in Section 105. This concern would be addressed in Amendment No. 1 attached to this statement.

2. Impacts of Wather Modification on Local Snow Removal Services

Representatives of California counties in the Lake Tahoe and Truckee River basins have expressed the valid concern that weather modification programs authorized by Section 105(4)(5) could result in increased local costs for snow removal and maintenance of public works. We believe that this concern should be addressed in Title I. The United States should evaluate the impact of weather modification programs and it should be authorized to enter into agreements with local public agencies to reimburse them for any additional costs incurred as a result of weather modification. We believe that this concern must be addressed in an amendment, because it involves an authorization; it is addressed in Amendment No. 2.

3. Coordination of Reservoir Operation

Before the Truckee River Settlement and consent to the Compact can take effect, Section 107 requires that specified lawsuits be dismissed and certain agreements be adopted among Nevada parties. One of these agreements, Section 107(a)(11), would provide for utilization of available reservoir storage to best effectuate the United State's obligations. Most of the Truckee River storage is located in California, and we believe that the State of California should be a party to this agreement. This concern is addressed in Amendment No. 3.

In addition to requesting the above amendments, we have several additional concerns which can be addressed by the report on S. 1558 to be prepared by this committee.

1. Lake Tahoe Levels and USBR Operation Study

Several California government agencies, including the Department of Water Resources, the State Water Resources Control Board and the Lahontan Regional Water Quality Control Board have received complaints from local agencies and residents of the Lake Tahoe area about high levels in the lake. They allege that current operation of Lake Tahoe keeps it high, which results in wave wash erosion, turbidity and structural damage, and adverse impacts on recreation due to innundation of beaches.

As a part of the activities required by Title 1, the United States Bureau of Reclamation will conduct an operation study of the entire Truckee River system, including Lake Tahoe. It should include consideration of Lake Tahoe levels and their impacts. Including a reference to this in the committee report would be desirable.

2. Operating Criteria

Section 111(b)(2) requires that an agreement be reached on project operating criteria for the Newlands project, and Section 107(a)(10) makes this one of the conditions of consent to the Compact taking effect. We believe that California does not need to be a party to this agreement because it will largely involve matters within the Newlands project. However, to the extent that the agreement were to affect waters within California, we would appreciate the opportunity to review and comment on the agreement before it is adopted. An expression of Congress' intent that California be consulted on this agreement would be helpful.

3. NEPA Exemption

Section 113 provides that the actions authorized by Title 1 are exempt from the requirements of the National Environmental Policy Act (NEPA). We recognize that one of the primary purposes of the Truckee River Settlement is to preserve and enhance the Lahontan Cutthroat trout, a threatened species and the Cui-Ui, an endangered species. We also recognize that, if one or more formal environmental impact statements were required on actions to implement the Truckee River settlement, it would be difficult or impossible to meet the one-year deadline.

During a briefing for California state and local agencies on the Truckee River settlement, representatives of the U.S. Bureau of Reclamation stated that they would perform "NEPA quality studies" in carrying out the United States obligations under Title 1. Prior notice and consultation with State and local agencies, and other interested parties is an important part of any NEPA study. California agencies should be given the opportunity to comment on proposed actions, as they would have if those actions were subject to NEPA. The legislative history should make it clear that Congress intends that appropriate notice and consultation with State and local agencies be a part of actions authorized under Title 1, and that the concerns of these agencies be considered prior to carrying out an activity that may affect the environment or public services.

4. Recognition of California's Water Rights Administration

Sections 103(a)(3) and Section 105(j) of Title 1 refer specifically to the authority of the State Engineer of Nevada; in essence, they provide a specific recognition of State jurisdiction over water rights. California's water rights authority is also involved in the Truckee River System, and it should be recognized. This could be done by amending these sections to refer generally to the water rights administrators of the two states. In the alternative, the legislative history should make it clear that Section 103(a)(3) and Section 105(j) are intended to apply as well to California's water rights jurisdiction.

V. EFFECT OF COMPACT ON UNITED STATES

Article XXII(3) of the Compact conditions its becoming effective on Congress providing in its consent legislation that specified sections of the Compact shall be binding on the United States. As introduced, S. 1558 does not have this specific provision; it should be added to Title II to assure that the Compact becomes effective, as the bill intends.

STATE OF CALIFORNIA REQUESTED
AMENDMENTS TO TITLE I OF S. 1558,
AS INTRODUCED

AMENDMENT 1

Section 105(l.) is added to read:

(l.) In contracting for water supply from Stampede Reservoir under Subsections (b), through (e), and in allowing for storage of privately-owned water in Stampede Reservoir, under Subsection (g), the Secretary shall take into account the allocation to California of 6,000 acre-feet per year of conservation yield from Stampede Reservoir under Article VI.B.3 of the California-Nevada Interstate Compact. Nothing in this section shall be construed either as an impairment of the Secretary's authority to contract with California for such conservation yield, or as a diminution of California's right to contract for such yield.

AMENDMENT 2

Section 105(m) is added to read:

(m) The Secretary shall conduct an investigation to determine impacts of weather modification programs authorized pursuant to Section 105(a)(5) on snow removal programs of local governmental agencies. The Secretary shall enter into agreements with such agencies to reimburse them for any additional costs of snow removal or maintenance or replacement of public works incurred as a result of such weather modification programs, and such costs shall be payable from money appropriated from the settlement fund for weather modification programs, or other funds specifically appropriated for such reimbursement.

AMENDMENT 3

Section 107(a)(11) is amended to read:

(11) Sierra Pacific Power Company, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe, the State of California, and the Secretary have executed an agreement (and, if necessary, ratified such agreement by a court having competent jurisdiction) providing for utilization of available reservoir storage to best effectuate the Secretary's obligations under Section 106(a)(1) and under Sections 105(b),(c),(d), and (e); and

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Statement to Congressional Committee Public Hearing on the Proposed Ratification of the California-Nevada Water Compact

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HKM, at the request of the Walker River Tribe and it's attorneys, has reviewed the proposed California-Nevada Compact for its effect on the Walker River Reservation.

There are three basic issues which presently affect the Reservation's water use pattern which would be accentuated by the proposed compact. They are:

A. Water Supply

There is an existing decree determining water usage in the Walker River Basin with an effective date of 1939. Based on the period 1939 to 1983, the Reservation has been shorted their decreed amount a significant number of times during the irrigation season. This happened even though sufficient water was available at all times to supply them with their decreed amount. This has occurred because of errors in management, new uses being allowed, changes in cropping patterns and other reasons. To ratify this compact and allow the States of Nevada and California to solidify these junior uses and changes in water use patterns that are upstream of the Reservation, will increase this problem and further impact the Reservation.

B. Water Quality

The water quality of water coming on the Reservation has diminished throughout the years. This is because of the number of reuses of the basic water supply and the amount of pollutants that are introduced through various agricultural and domestic practices upstream. The water quality may be diminished shortly to the point that it will not be useable for fisheries, irrigation or domestic use. To ratify this compact as presently constructed will cause serious water quality problems for the Walker River Tribe.

C. Land Base

The compact in its present state ignores totally the irrigable lands available for tribal development on the areas restored to the Reservation in 1936. There are, at a minimum, 10,000 acres of land which could be economically irrigated by the Tribe but which do not have a recognized water right.

Passage of the compact in its present form and with its present language would appear to prohibit this development and would be injurious to the Walker River Tribe.

If the compact is passed in its present form, the Tribe will suffer a severe lack of water and its development will be curtailed. The compact does not recognize properly the water supply problems in the basin nor does it provide for proper water management techniques necessary for the Tribe and non-Indians to develop the land based resources adequately.

A. T. Kersich, P. E.
President

STATEMENT OF ELVIN WILLIE, JR.
CHAIRMAN, WALKER RIVER PAIUTE TRIBE
ON S. 1558

My name is Elvin Willie, Jr.; I am the Chairman of the Walker River Paiute Tribe. Before briefly relating the Tribe's concerns with the present legislation, I would like to request that our detailed comments, our engineering summary, and the comments of our attorney be made a part of this hearing.

The Tribe is very concerned with Title II of the proposed legislation. Title II, as you know, calls for the ratification of the California-Nevada Compact which would control water use from the Walker and Carson Rivers, as well as the Truckee River and the Lake Tahoe Basin. We are fearful that on the Walker River, the Compact will be viewed as establishing a comprehensive scheme governing the use of water from the Walker River instead of simply allocating water between the two states.

In short, we are worried that the Compact will be considered a legislative quantification of the Tribe's water rights. It is our understanding that Congress normally will take such a step only when there is consensus among the affected water users. Here there is no consensus. In the recent process, there has been no consultation with the Tribe at all. The Tribe is very disappointed that its concerns were ignored in the four years of discussion which resulted in the proposed legislation. We do not know why the state and federal government decided to proceed without us.

Certainly, federal concern over ratification of the Compact is now new. Since the Compact's initial proposal in 1969, four Administrations have opposed the Compact, in part because of its adverse effect on the Walker River Reservation. The scrutiny with which prior Administrations have reviewed the Compact is entirely appropriate, given the impact which the Compact will have on tribal interests. Under our constitution, those interests have always been of national importance and not simply ~~left to the~~ states. It is also important for this Committee to understand that the Walker River Tribe has never endorsed the Compact.

The objections to the Compact expressed in the past are well-founded. The Compact provides the Tribe with rights to 13,000 acre-feet of storage rights and 9,450 acre-feet of direct flow rights, each with a 1933 priority date, in addition to the rights awarded to the United States on behalf of the Tribe in United States v. Walker River Irrigation District.

The rights granted by the Compact would only irrigate approximately 7,000 acres. That would provide less than six acres of irrigated land for each tribal member. The tribal needs are far greater. In 1906, the United States promised to provide a water supply for 10,000 acres of allotments in return for the cession of a large part of our Reservation. That commitment has not been met. In 1936, after the close of evidence in United States v. Walker River Irrigation District, and after the time period governed by the decree, approximately 167,000 acres of land were restored to the Reservation. The Tribe's reserved rights for these lands have never been judicially determined. To date our engineers have identified in the restored portion of the Reservation at least 10,000 acres of land, which would satisfy the current legal and factual tests for a reserved water right. Stated briefly, the rights provided to the Tribe by the Compact are plainly insufficient. They do not fulfill the government's earlier commitment to provide water for our allotments and they do not provide water for the lands restored in 1936.

As we read the Compact, it is extremely ambiguous. Over the last few weeks, we have heard a lot of testimony about what the Compact means for the Walker River Tribe. Not all that testimony was consistent.

We believe our concerns with the Compact are substantial. Until recently, the Department of Interior never endorsed the Compact. Now, for the first time, Interior claims that all our concerns, and the past concerns of the Interior Department, can be resolved by looking at Art. 18 of the Compact. As a result, Interior suggests that the Compact does not limit us from advancing any and all claims against all water users in Nevada on the Walker River. They also say, if we understand them correctly, that the Compact does not bolster in any way the claims to water of our upstream neighbors. In summary, they say the Compact will be neutral as to any future litigation between us and other Nevada water users. That is an interesting reading of the Compact.

The provisions of the Compact which give us concern, and which we ask the Committee to closely review, are the following:

1. Art. 22 makes Art. 8A4B binding on the United States and the Tribe. We want to make certain that language is not read to impose an upper limit on the additional water rights the Tribe can obtain in Court.

2. We want to make certain that the following provisions: 8A4A with its reference to unknown existing uses; 8A5 with its reference to extra legal rights in Antelope Valley; and the reference in 8B to new upstream storage, are not viewed as strengthening the hands of our potential adversaries in litigation.

In particular, we are concerned with references by the Walker River Irrigation District to Hoye Canyon Dam--a proposed upstream storage project for the benefit of the District. There, the State Engineer granted the District a permit to develop an upstream storage project in 1931. It has not yet been perfected. We do not want the Compact to be viewed as in any way affecting the validity or invalidity of that claimed right. We also do not want the Compact to be viewed as somehow confirming the rights to an additional 850 cfs awarded to the Walker River Irrigation District in 1969.

3. We are also very concerned with the splitting of the Water Master's authority. In some cases, he will answer to

the District Court; in others, to the Compact Commission in which we have no say. If, in fact, Art. 20 permits the Tribe free access to federal court to review the Commission's actions and no deference is due the Commission's findings, our concern in this regard may be weakened.

Perhaps it would be helpful as a summary to just list some of the Compact's ambiguities.

1. When are we talking about water rights and when are we talking about water uses? Our Tribe is told we should be happy with C-125 and the Compact. TCID, though, gets back its contract to run the Newlands Project, which it lost in litigation. Sierra Pacific gets water from Stampede Reservoir, which it also lost in litigation. In short, there was give-and-take on the Truckee River. The tribal government at Walker River never participated in any meaningful way in such give-and-take on the Walker River.

2. Priority dates--1933 v. 1859. On the Reservation the same water irrigates the same land. One day it is 1933 water, while the next day it is 1858 water?

3. We are told the Compact ends all litigation. But then we are told three water quality suits on the Truckee River will continue.

On the Walker River, the Manager of the Walker River Irrigation District provided testimony stating that all potential litigation by the Walker River Paiute Tribe is concluded, but the Director of the Department of Natural Resources (Roland Westegard) testified that the Compact allows for future litigation by the Walker River Tribe.

4. Before the Senate Select Committee on Indian Affairs we were told the Compact confirms the water rights spelled out in the existing decrees, but a careful comparison between C-125 and the Compact shows an increase in storage rights of Topaz Reservoir by 9,000 acre-feet.

5. By the language of the Compact, the confirmation of existing uses is limited to areas upstream of Weber Reservoir, why aren't uses upstream of Walker Lake, which would include all uses on the Reservation, confirmed? This clause makes it an Indian v. non-Indian issue, since the Water Master states that the Tribe currently receives an average of over 35,000 acre-feet of water. Under the Compact, those uses would be cut--according to Walker River Irrigation District's testimony--to 22,000 acre-feet.

Finally, the Compact was drafted in 1968. During the intervening years, other issues have come to the forefront. Although water quality is of increasing concern and has spurred a heated debate between the two states, the Compact makes no meaningful attempt to address that topic. The Endangered Species Act has been enacted since 1968. Walker Lake is home to the Lahontan cutthroat trout which, as a threatened species, is entitled to protection under that legislation, but the Compact imposes a management scheme which pays no deference to this fact.

The problems on the Walker River are substantial and require resolution. However, the hasty enactment of a poorly conceived and out-dated scheme for governing the Walker River will not solve these problems. A lasting solution can only be achieved through consensus reached in discussions with all affected parties. To date that has not occurred.

For these reasons, the Walker River Tribe urges the elimination of Title II from the Pyramid Lake settlement legislation.

Thank you for the opportunity to state our views. I would be glad to answer any questions you may have.

COMMENTS OF THE WALKER RIVER PAIUTE TRIBE ON S. 1558 AND H.R. 3213

9 September 1985

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Chairman

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I. INTRODUCTION

The Walker River Paiute Tribe is strongly opposed to ratification of the California-Nevada Compact. Since the creation of the Walker River Reservation in 1859, the United States has consistently and repeatedly promised that the lands of the Reservation would be developed for agricultural purposes. If implemented, the Compact will be used to frustrate the fulfillment of those past commitments which cannot be satisfied without providing an increased water supply to the Reservation.

The Tribe's objections to the Compact are not new. The Nixon Administration, the Ford Administration, and the Carter Administration all concluded that the Compact does not adequately address the interests of the Walker River Tribe. Despite the long history of concern over the Compact's effect on the Walker River Reservation, no effort was made to address these objections prior to the introduction of S. 1558 and H.R. 3213. Title I of that legislation seeks to resolve the bitter controversy over the use of water on the Truckee River. Title II would ratify the Compact, which will then govern the operation of Lake Tahoe, the Truckee River, the Carson River and the Walker River.

In order to understand the Tribe's objections to the Compact, it is necessary first to examine the history of the Reservation and the prior litigation on the Walker River. Second, regulation of the River under the terms of the Compact must be compared to the existing management. Finally, the unresolved tribal claims to additional water must be considered. Placed in proper context, the validity of the Tribe's objection to the hasty ratification of the Compact is abundantly clear.

II. BACKGROUND OF THE PRESENT LEGISLATION

The underlying intent of the proposed legislation is to end decades of controversy over conflicting rights to the use of water from the Truckee River. Beginning in 1966, the Secretary of the Interior sought with increasing vigor to restore the fishery at Pyramid Lake. *See*, *e.g.*, 43 CFR, part 418. Those efforts spawned extensive litigation with one case, *Nevada v. United States*, 463 U.S. 110 (1983), finally being decided by the Supreme Court. Three other cases, *United States v. Alpine Land & Reservation Company*, 503 F. Supp. 877 (D. Nev. 1980), *aff'd* 697 F.2d 851 (9th Cir. 1983), *intervention granted*, *cert.* *denied* *sub* *nom* *Pyramid Lake Paiute Tribe of Indians v. Truckee-Carson Irrigation District*, ____U.S.____ (1983), 78 L.Ed.2d 170; *Truckee-Carson Irrigation District v. Secretary*, 742 F.2d 527 (9th Cir. 1984), *cert.* *denied* 53 U.S.L.W. 3867 (June 11, 1985); and *Carson-Truckee Water Conservancy District v. Watt*, 549 F. Supp. 704 (D. Nev. 1982), 748 F.2d 523 (9th Cir. 1984), *cert.* *denied* 53 U.S.L.W. 368 (March 26, 1985), have been finally decided by the Court of Appeals for the Ninth Circuit. Nevertheless, in the absence of a negotiated resolution, the future for the Truckee River remains uncertain, except that the expensive and bitter lawsuits will continue.

Almost since its first day in office, the present Administration, acting principally through the Department of the Interior, has strongly supported the concept of a negotiated solution to the problems on the Truckee River. Over the last 4-1/2 years, the Department has devoted considerable funds and effort to this commendable objective. Even with current budget restraints, Interior has funded the legal and technical expertise which the Pyramid Lake Tribe required to participate in such discussions in a meaningful manner. In summary, Title I of the proposed legislation is the result of a long and lengthy process in which all affected parties--except for the Fallon Paiute Shoshone Tribes--on the Truckee River participated. Our understanding is that the final product represents a result which is endorsed by all the participants in those discussions.

The contrast with Title II is remarkable. Title II would ratify the California-Nevada Compact which affects the Carson and Walker Rivers, as well as the Truckee River. Despite the magnitude of the problems on the Carson and Walker Rivers, there have been no discussions with the water users on the Walker River and only some of the users on the Carson have been consulted. Certainly, there has been no attempt to develop a mutually acceptable solution to the water shortages confronting the users on the Walker River. The legislation, as it affects the Truckee River, represents the resolution of a problem by consensus; as it affects the Walker River, it represents the resolution of a problem by legislative fiat without even the pretense of consultation, let alone consensus.

III. THE WALKER RIVER RESERVATION

The Walker River Indian Reservation was established by a November 29, 1859 letter from the Commissioner of Indian Affairs to the Commissioner of the General Land Office and confirmed by an Executive Order dated March 19, 1874. As initially created, the Reservation contained approximately 320,000 acres.

Pursuant to the Act of May 27, 1902, 32 Stat. 260, the Secretary was directed to allot 20 acres to the head of each family residing on the Reservation and also to reserve land for dwellings or buildings, etc. Under that legislation, the President was to open the remaining Reservation land for settlement with the consent of the Indians of the Reservation. An agreement was reached on July 20, 1906, under which the Indian signatories agreed to the opening of the surplus lands on the Reservation to public entry. Under the terms of the agreement, as demonstrated by surrounding documents and circumstances, water rights were to be secured for all 504 of the 20-acre allotments of irrigable land and an irrigation system built by the federal government. In addition, approximately 38,000 acres of grazing lands, as well as 3,355 acres of timberland, were retained in the Reservation.

The Act of June 22, 1936, 49 Stat. 1806-1807, authorized the Secretary of the Interior to set aside certain lands as an addition to the Reservation. In accordance with that legislation, by Secretarial Order dated September 25, 1936, the Secretary restored to the Reservation 167,460 acres which had previously been relinquished under the 1906 agreement.

The Reservation currently encompasses 323,424 acres of land. At present, approximately 800 people live on the Reservation, of whom about 750 are tribal members. The current tribal roll recognizes about 1,300 people as tribal members. The Reservation's resources are scarce and the Tribe must depend on agricultural development if it is to provide a viable home for its members. Currently, the only substantial private employment on the Reservation is in the area of agriculture. The Tribe is organized under the Indian Reorganization Act, 25 U.S.C. §§ 476, 477, and has been recognized by the Secretary of the Interior as having authority to represent its enrolled members.

IV. THE WALKER RIVER

The Walker River is a non-navigable interstate stream. It has two branches, the West and East Walker, both of which form from numerous small streams arising on the Eastern slopes of the Sierra Nevada Mountains in Mono and Alpine Counties, California. These streams are fed primarily by melting snow pack. As a result, flows are large in spring and early summer and low during the remaining parts of the year. The West Walker provides the primary source of irrigation water for the Antelope Valley in California and Smith and Mason Valleys in Nevada. Topaz Reservoir is located on the West Fork just below Antelope Valley. The East Fork provides irrigation water to land upstream from Mason Valley and to portions of Mason Valley. Bridgeport Reservoir is located on the East Fork. The two forks merge near the head of Mason Valley and provide water for Mason Valley. The River subsequently flows through the Reservation for about 25 miles and empties into Walker Lake. The River provides the primary water supply for the Reservation.

V. EXISTING WATER RIGHTS

In 1924, the United States filed a case in the federal district Court for Nevada entitled United States v. Walker River Irrigation District In Equity No. C-125, seeking to adjudicate the water rights of the Walker River. At that time, the reduced Reservation consisted of approximately 80,000 acres. The United States claimed reserved rights[1] on behalf of the Tribe for the 10,000 acres of allotments established pursuant to the 1902 Act. The district court issued its decision in 1935, refusing to grant reserved rights to the Tribe, but recognizing appropriative water rights for 2,100 acres of land actually under irrigation at that time. See United States v. Walker River Irrigation District, 11 F. Supp. 158 (D. Nev. 1935), 14 F. Supp. 10 (D. Nev. 1935). The court assigned priority dates to the tribal water rights as of the date the water was actually put to use.

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[1] The reserved rights doctrine was first recognized in Winters v. United States, 207 U.S. 564 (1908), in which the Supreme Court held that the right to use the waters of the Milk River was impliedly reserved in the agreement establishing the Fort Belknap Reservation in Montana. That decision has been repeatedly upheld by the courts which have confirmed that such rights are intended to meet the present and future needs of the Reservations. See, e.g., Arizona v. California, 373 U.S. 546, 597-600 (1963); see generally F. Cohen, Handbook of Federal Indian Law 575-592 (1982 ed).

The final decree implementing the court's decision was entered on April 15, 1936. That decree, inter alia, recognized certain upstream storage rights of the Walker River Irrigation District, even though the storage facilities in question had not yet been built. The decree also recognized extensive appropriative rights for upstream non-Indian water users. A fear of adversely affecting the users upstream had been the motivating factor behind the district court's limiting of the tribal rights. The district court recognized the following quantities of water rights for non-Indians:

Bridgeport Meadows	20,000 acres
East Walker	16,000 acres
Antelope Valley	12,000 acres
Smith Valley	15,000 acres
Mason Valley	48,000 acres
	111,000 acres

United States v. Walker River Irrigation District, 11 F. Supp. at 161.

The decision of the district court that the Reservation was not entitled to a reserved water right was reversed by the Ninth Circuit in 1939. United States v. Walker River Irrigation District, 104 F.2d 334 (9th Cir. 1939). The Court of Appeals held that the Tribe had a reserved water right with a priority date of 1859 but adopted the now plainly erroneous conclusion of the lower court that a water supply for the then irrigated 2,100 acres was sufficient to met the needs on the Reservation. Hence, the court did not recognize any rights in addition to the existing uses.[2]

After the decision of the Ninth Circuit, the parties entered into a stipulation under which the Tribe received 26.25 cfs for a 180-day irrigation season with a priority date of November 29, 1859 in order to irrigate 2,100 acres. The stipulation provides that the decree establishes rights for the parties, including the United States, as of April 14, 1936. That provision was added in order to permit the United States to make a subsequent claim for Weber Reservoir, a federally-constructed storage facility on the Reservation. Moreover, because the claims closed as of April 14, 1936, the decree plainly did not address the question of the water rights for the land restored to the Reservation on September 25, 1936, in accordance with the Act of June 22, 1936. Virtually since the entry of the final decree, the Tribe and the Bureau of Indian Affairs have complained that the decision is inconsistent with the reserved rights doctrine in that it only recognized water rights for existing uses and did not provide for the future needs of the Tribe.[3]

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[2] In Arizona v. California, supra, the Supreme Court quantified reserved rights for agricultural purposes by providing sufficient water to irrigate all "practicably irrigable acreage" on the five Reservations on the Lower Colorado River. That test provided water for all acreage on the Reservations which was economically feasible to irrigate, whether or not the land was actually under irrigation at the time of trial. The standard was expressly designed to insure that tribes receive sufficient reserved rights to meet their future needs for water.

The Tribe is now preparing to intervene in United States v. Walker River Irrigation District. The Tribe will seek a reserved right for the land restored in 1936 subsequent to the original presentation of evidence. The Tribe will also seek formal recognition of its right to store water in Weber Reservoir. In addition, the Tribe will seek assurances that the terms of the decree are being enforced against upstream users who have greatly expanded the amount of irrigated acreage since the entry of the decree.

VI. THE CALIFORNIA-NEVADA COMPACT

In 1955, pursuant to Public Law 84-353, the United States granted permission to the States of California and Nevada to negotiate a compact allocating the waters of the Walker, Truckee and Carson Rivers. In 1968, the negotiators proposed a compact which was adopted by the California Legislature in 1970, and the Nevada Legislature in 1971. Since that time, through the four previous administrations, the Executive branch has opposed ratification of the Compact. See Memorandum to Acting Secretary of the Interior from California-Nevada Interstate Compact Committee dated December 11, 1980 (a copy of which is attached as Exhibit A); Letter to Charles Zwick from Stewart Udall dated January 4, 1969 (a copy of which is attached as Exhibit B); Memorandum to Legislative Counsel from Acting Associate Solicitor Indian Affairs dated April 28, 1977 (a copy of which is attached as Exhibit C); Letter to James T. McIntyre from Cecil Andrus dated May 25, 1979 (a copy of which is attached as Exhibit D).[4/] There have been numerous reasons for that opposition. Obviously, the United States has been concerned about the impact of the Compact on the Pyramid Lake Tribe. It has also consistently noted that the interests of the Walker River Tribe were not adequately protected under the Compact. While the United States has addressed these issues on numerous occasions, there has been no attempt to resolve the concerns expressed in connection with the Walker River.

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[3] The district court argued that the Tribe did not need any additional water since the Tribe had not put more land into production over the years. But the reason the Tribe had not developed additional land is apparent from the records of the BIA. Since the Reservation sits at the lower end of the River, upstream users had simply not released enough water to permit additional development on the Reservation.

The Tribe has many objections to the Compact. At present, the Tribe receives in the neighborhood of 20,000 to 25,000 acre-feet of water per year, and irrigates approximately 5,000 acres of land. Under the Compact, the Tribe would

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[4/] These documents demonstrate the longstanding awareness by the Department of the Interior of the problems posed by the Compact. If resolution of the difficulties on the Truckee River were to include ratification of the Compact, there is simply no excuse for the Department of the Interior not having initiated discussions among the water users on the Walker River.

receive approximately 29,000 acre-feet of water annually. That includes (1) the 26.25 cfs with an 1859 priority date established under the terms of C-125, (2) an additional direct flow right of 9,450 acre-feet which has a 1933 priority date, and (3) a storage right for Weber Reservoir of 13,000 acre-feet with a 1933 priority date. The slight increase in tribal rights granted by the Compact is not sufficient to meet the tribal needs. It certainly does not address the question of water rights for the restored lands, nor does it provide sufficient water to irrigate the full 10,000 acres as promised in 1906. Indeed, our engineers advise us that the water supply provided by the Compact will permit the Tribe to irrigate only slightly over 7,000 acres.

If the Compact is ratified, the provisions of Art. VIII A.4.(b), which is expressly made binding on the United States by Art. XXII, will no doubt be raised as a bar to the tribal claims for additional water. Utilization of the Compact to preclude additional tribal claims may subject the United States to substantial monetary liability. See Arizona v. California, supra; Menominee Tribe v. United States, 391 U.S. 404 (1968).

In contrast to the minimal allocations granted the Tribe, the Compact is very generous to the upstream users on the Walker River. First, it confirms all rights granted in United States v. Walker River Irrigation District. Arguably, this includes substantial upstream storage rights with 1926 priority dates on the West and the East Walker Rivers, even though those storage facilities have not been built.[5] In addition, the Compact confirms the right of the Walker River Irrigation District to store water of the East Walker River in Bridgeport Reservoir and to divert up to 57,000 acre-feet of water to storage annually. Moreover, the Compact omits the language in the decree that those diversions are to occur only when "there is in the River a quantity of water in excess of the total amount adjudicated to the parties hereto to the extent of such excess." Similarly, the Compact confirms the right of the District to divert up to 85,000 acre-feet of water annually to storage in Topaz Reservoir without the limiting language of the decree.

Article VIII(4)(a) allocates to each State the "amount of existing diversions and uses of water of the Walker River Basin diverted upstream from Weber Reservoir and not specifically covered in Decree C-125." The Compact further provides that "in making this allocation it is recognized that the amounts of water allocated and the respective priorities are not presently known with certainty." The Compact also states that the date of priority for those rights shall be the date of initiation of use, whether or not those users are entitled to such priorities under applicable law. It appears that substantially more land is now irrigated within the upstream areas than at the time of the adjudication. For example, in its testimony before the Natural Resources Agriculture and Mining Committee of the Nevada State Assembly, the Walker River Irrigation District claimed that 21,100 acres in Smith Valley, as compared to 15,000 at the time of the adjudication, were entitled to water rights. See Prepared Statements of the Walker River Irrigation District before Natural Resources, Agriculture and Mining Committee AB280, dated March 19, 1985. Finally, the Compact allocates unused water 65% to Nevada and 35% to California. In addition, the Compact specifies that unused water cannot be used below the point where the Walker River meets Walker Lake.

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[5] We note, however, that at the time of the original litigation, the Walker River Irrigation District conceded that a long delay in building those facilities would preclude claiming the early priority date for those rights.

The difficulties with the Compact, thus, are enormous. First, it simply does not meet the needs of the Tribe. Second, the Compact purports to confirm upstream storage rights with early priority dates, even though those storage facilities have never been built. Moreover, the Compact appears to confirm existing upstream uses, the amount of which is not even known.[6] In sum, the Compact's provisions for the allocation of the water on the Walker River turn the Winters doctrine upside down. It is the non-Indians who receive a firm future supply of water sufficient to meet their projected needs. The Tribe, in contrast, is limited to the uses it was making in the 1920's and 1930's.

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[6] Presumably, that recognition of existing uses is only binding on Nevada and California and not on intrastate questions of who is entitled to that water. Nevertheless, it certainly gives a presumption of validity to those users now using water in violation of applicable law.

Other problems exist with the Compact as well. A vast amount of jurisdiction is vested in the Compact Commission. For example, it is the Compact Commission which will determine water availability for Watasheamu Reservoir, an authorized but never built component of the Washoe Project. Act of August 1, 1957, 43 U.S.C. § 614a. Yet there is no tribal representation on the Commission and the federal representative is not entitled to vote. These shortcomings are a direct reflection of the lack of consultation with the Tribe and those in the Department of the Interior charged with protecting tribal interests at the time the Compact was drafted. That initial omission has never been corrected.

Finally, the Compact was drafted in 1968. During the intervening years, other issues have come to the forefront. Although water quality is of increasing concern and has spurred a heated debate between the two states, the Compact makes no meaningful attempt to address that topic. See The Truckee River: Just How Dirty Is It? Reno Gazette Journal, Sunday, August 11, 1985 (a copy of which is attached as Exhibit E). So too, since 1968 the Endangered Species Act, 16 U.S.C. § 1531 et seq. has been enacted. Walker Lake is home to the Lahontan Cutthroat Trout which, as a threatened species, is entitled to protection under that legislation, but the Compact imposes a management scheme which pays no deference to this fact. Recent newspaper articles focus attention on disputes over recent attempts by Sierra Pacific Power Company to export water from

California. See Legal Battles Seen Over Sierra Pacific Acquisition Plan, Reno Gazette Journal, August 4, 1985 (a copy of which is attached as Exhibit F). Again, this topic is not addressed by the Compact. As far as we are aware, there has been no effort even to identify problems or matters of concern which have surfaced since 1968.

VII. CONCLUSION

The Walker River Tribe urges that Title II be dropped from the Pyramid Lake Settlement bill. The long-awaited settlement on the Truckee River should not be thwarted while the parties on the Walker River seek a solution to the problems in their watershed. The Tribe wholeheartedly supports the idea that the problems on the Walker River, like those on the Truckee, should be resolved by negotiations among the affected parties, rather than through protracted and costly litigation. Indeed, we have no reason to believe that a mutually acceptable solution could not be reached. But it has taken four years to reach consensus on the Truckee River; we doubt that there is sufficient time to resolve the serious problems on the Walker River in the very short period established for passage of the Pyramid Lake settlement legislation.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
PACIFIC SOUTHWEST REGION

PACIFIC SOUTHWEST FIELD COMMITTEE
BOX 36098 . 450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

December 11, 1970

Memorandum

To: Acting Secretary of the Interior

From: California-Nevada Interstate Compact Committee

Subject: Proposed Consolidated Federal Position

On September 3, 1970, our Department was requested by the Office of Management and Budget to take "lead responsibility" in developing a Federal position with respect to the proposed California-Nevada Interstate Compact. The primary motivation was the recent passage by the California Legislature of A. B. 1350 (enacted September 19, 1970), which embodied a form of compact proposed by the State of California and which is to be considered by the Nevada Legislature early next year. We were also advised by the Office of Management and Budget that Mr. J. R. Riter, the Federal Representative, was being requested to seek to reopen negotiations with the states.

By memorandum of September 23, 1970, the former Secretary, Walter J. Hickel, appointed our field committee for the purpose of drafting a consolidated Federal position as to the proposed compact and directed that we proceed immediately.

In the process of carrying out our instructions we have had numerous meetings over the last several months during which time we have given long and serious consideration to the manifold problems inherent in the subject matter of the proposed compact. In this regard we requested and received the assistance and counsel of not only the Interior staffs and agencies represented by the members of this committee, but also other Interior offices and personnel as well as representatives of the Departments of Agriculture and Justice and

EXHIBIT "A"

Mr. Riter, the Federal Representative. A list of the participants in our meetings is attached hereto and designated Attachment A. The assistance and cooperation of the participants was extremely helpful and greatly appreciated.

Although we received and welcomed the assistance of the other participants in this endeavor and the work product of this committee reflects the joint efforts of all concerned, the final recommendations of this committee were reached by the committee itself and do not necessarily reflect the views of other participants. In fact portions of our recommendations are not concurred in by the Department of Agriculture as evidenced by a letter to this committee from Sheldon G. Boone dated December 3, 1970, and attached hereto as Attachment B.

It is our understanding, however, that the basic responsibility for recommending a consolidated Federal position on this proposed compact was vested in this committee and, therefore, after consideration of various viewpoints and reasons in support thereof, including the points noted in Attachment B, the committee came to its own conclusions and recommendations. We understand that it is the intent of the Office of Management and Budget to circulate for comment by other interested agencies whichever Federal position is tentatively approved by you and that office. The Department of Agriculture and other departments so inclined will, therefore, have another opportunity to express their views.

Mr. Riter has also advised us that the States of California and Nevada have suggested that negotiations with the Federal government on the compact will not be sought until after the Nevada Legislature has acted on the modifications to the compact as enacted by California in A. B. 1350. It is anticipated that the Nevada Legislature will take action on this matter early in its next session, which commences in January 1971.

We believe it to be unnecessary to reiterate in detail the long history of this proposed compact; suffice it to say that a compact has been under active study and consideration for the last 15 years. The impetus for a compact is the fact that the respective rights of the two states and the Federal government have not been adjudicated with respect as to their competing uses in the four interstate water basins here concerned. As stated in Article I of the proposed compact, the purposes of the compact are:

> "... to provide for the equitable apportionment of water between the two states; to promote interstate comity and to further intergovernmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly integrated and comprehensive development, use, conservation and control of the water within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins."

As in many other parts of the country, the water demands and conflicts in the four basins here involved are becoming increasingly more complex and controversial and require some form of immediate resolution.

The compact approach has been used successfully many times in the past to resolve interstate water controversies and it was selected here in lieu of litigation as a preferred potential solution. This committee agrees that of the alternatives available the compact procedure appears to offer the most satisfactory method for resolution. We hasten to add, however, that as we view it, the compact procedure was originally intended to apply to situations where two or more states had a basic disagreement on a subject matter of peculiar applicability and importance to the compacting states and with minimum, if any, direct Federal interests involved. Thus, in the normal situation all that was necessary was for the compacting states to agree on a formula to resolve their differences and Congress would be asked to merely consent to the provisions of any such proposed compact pursuant to the Article I, Section 10 of the United States Constitution. Typically the compact would disclaim any effect on Federal laws, properties, rights or projects. In the present situation, however, it was quite obvious from the outset that the major interests concerned in any compact involving three of the four named basins were Federal. This fact was admitted by the Joint California-Nevada Interstate Compact Commission in their letter of August 1, 1968, to the Federal Representative wherein they stated:

> "At the outset of negotiations some twelve years ago certain principles were formulated for the negotiations of compact terms. It was recognized that the claimed rights of the United States would preclude a compact between the States of California and Nevada since the

> United States through its professed claims could utilize all of the waters of the Truckee and Carson Rivers and Lake Tahoe ...."

In spite of this fact the Federal Representative appointed to participate in the negotiations for this compact, for whatever reasons, was not permitted to affirmatively "negotiate" for protection of basic Federal interests. This situation has resulted in a somewhat awkward and embarrassing circumstance where it can truthfully be alleged (as it has) that the Federal government has been represented on the joint compact commission for 15 years, and, therefore, should not now be heard to complain about a lack of opportunity to "negotiate." This allegation can be met in some degree, but the committee felt that the rationale for this situation should be determined by the Federal Representative and not by this committee.

The reason for mentioning the foregoing is to preface our recommendations with the understanding that the currently proposed compact, although 15 years in the making, has little protection for vital Federal interests. Therefore, since it has apparently been decided that a compact is in the best interests of the United States (and the committee concurs in this), comprehensive rewriting of the presently proposed compact is essential and is what this committee has undertaken.

In analyzing the situation our committee concluded, from the Federal government's point of view, that the proposed compact presents three practical alternatives or approaches: (1) to reject any Federal participation whatever in the compact; (2) to permit limited Federal participation; and (3) to become a full party to the compact by way of a tri-party agreement. Rather than selecting only one of these alternatives and pursuing it as the committee's recommendation, it was decided to prepare and discuss a position as to all three with a recommendation by the committee as to the most preferable in our judgment. Thus, if it is decided to follow an approach other than that recommended by this committee, an alternate Federal position would be immediately available for use.

APPROACH I -- NO FEDERAL PARTICIPATION

Under this approach the proposed compact would be so amended as to preclude subrogation of any Federal interests or right, leaving in substance merely an agreement between the states.

It should be recognized, however, that the consequence of this approach would in net effect be a rejection of the compact. This possibility was recognized by the Joint California-Nevada Interstate Compact Commission in their letter of August 1, 1968, to the Federal Representative wherein they stated:

> "The United States owns or controls virtually all of the storage and diversion facilities on the Truckee and Carson Rivers and Lake Tahoe. If it does not agree to the allocations to each of the two states, obviously such allocations are of no force or effect."

The method of implementing this approach is set forth in Attachment C hereof.

The committee recommends that Approach I not be adopted. We are of the belief that this approach would inevitably lead to long and protracted litigation between the States of California and Nevada and the Federal government. The water problems and shortages in these basins are critical and must be resolved as soon as possible, and if Arizona v. California is any criterion, litigation of water problems, the magnitude of those here concerned, is clearly not a satisfactory method of resolution. It must be conceded that if successful negotiations under one of the other approaches discussed hereinafter is not possible, the Federal government may well be forced to utilize Approach I in the best interests of the United States. It is submitted, however, that this approach should be one of last resort and not one of preference, and we so recommend.

APPROACH II -- LIMITED FEDERAL PARTICIPATION

Under this approach the Federal government would not be a party to the compact but would participate to a limited extent in certain of the compact provisions and its resulting commission by virtue of express consent of Congress to specific provisions of the compact. This is in substance the approach presently contemplated and recommended by the states. It is to be recognized, of course, that inherent in any decision to pursue a compact is a determination that there will be some compromise in the traditional Federal position that the states do not and cannot exercise any control or authority over Federal rights, projects, or lands.

The major drawback to this approach, in our view, is that the states would be full parties and have primary control over the use and distribution of what are essentially Federal waters and storage facilities, with the Federal government merely having a subservient and somewhat passive role in the administration of the compact provisions. This procedure is undoubtedly acceptable in situations where the state interests are dominant, but, as previously noted, this certainly is not the case in regard to the subject matter of this proposed compact. The committee recognizes, however, that for other cogent reasons it may be desirable to utilize this limited participation approach rather than the tri-party approach (Approach III hereinafter) which this committee feels is the strongest and best approach from the viewpoint of the Federal interests. In substance then, this committee recommends that Approach II be adopted only if it is determined that Approach III is not feasible. We feel that Approach III gives the strongest voice and protection for the Federal interests and should be adopted, as discussed more fully hereinafter.

Attachment D contains our detailed suggested changes from A. B. 1350 to provide what we consider maximum practical protection for our Federal interests. There is also attached thereto a rationale for each proposed change. Our objective under this approach was to accept the basic compact as proposed by A. B. 1350 and to make only those changes which we felt were essential to provide protection in those areas wherein the Federal government would consent to be bound by the compact provisions.

The major changes from A. B. 1350 recommended by this committee under Approach II may be summarized as follows:

Article IV -- The California-Nevada Compact Commission

We have amended this article to delete the residency requirements of the Federal member and have also given him a vote. We recognize, however, that for all practical purposes the one vote of the Federal member will not be determinative of any matter before the commission since the article requires the concurring votes of both states to approve a motion or other action. Since Federal participation is limited under this approach, we did not feel that more than this token vote was required or would be accepted by the states.

Article VI -- Truckee River Basin

As originally proposed by the Joint California-Nevada Compact Commission, this article posed such a catastrophic threat to Pyramid Lake that this Department, as well as the Pyramid Lake Indians and others, actively opposed the compact during its consideration by the California Legislature. The California Legislature agreed that the original version was indeed a threat to Pyramid Lake and after several unsuccessful amendments, finally accepted the version in A. B. 1350 as providing as much protection for the lake and the Indians as they felt was necessary.

Although the present version is concededly better than the original, the committee felt that it could and should be even more protective of Pyramid Lake and the claimed rights of the Pyramid Lake Indians. For this purpose then, the committee proposes to amend Article VI to provide for acceptance of any future judicial determination of Indian rights to additional water. We propose also to recognize recreation as a beneficial use on Pyramid Lake as well as other areas.

One further matter is treated here and in Article VII; that is the issue of water requirements for the Stillwater Wildlife Management Area. The committee recognizes the importance of Stillwater and at the same time we recognize the tenuous and uncertain status of its water supply. We felt that this compact might afford an opportunity to at least express the desires of both states that Stillwater be kept viable and leave to another forum the task of determining the best method of accomplishing this objective. We are aware, for example, that the Pyramid Lake Task Force is currently studying this problem, among others, and hopefully will make some affirmative recommendations in this regard.

Article VII -- Carson River Basin

The A. B. 1350 version of this article in essence vitiates the claimed rights and priorities of the Federal government as alleged in the pending Alpine case. The article has been rewritten to provide for recognition of the present interim decrees in that case and acceptance of the final decree therein when issued. The Departments of Interior and Justice feel that such amendments are necessary under any form of compact to permit final judicial adjudication of the Carson River and to obtain, if possible, the consent of California and Nevada to be bound thereby.

Article VIII -- Walker River Basin

The committee has amended this article to provide protection for the Walker River Indians in the event they too may obtain a future judicial determination of entitlement to additional waters.

Article XXI -- Nonimpairment of Rights of United States

For purposes of clarity and emphasis, the committee has added additional areas of sovereign rights and authority to this article to avoid any erroneous interpretation of intent to subrogate in these fields.

Article XXII -- Ratification and Consent

By rewriting the major portions of the provisions of the comp to which the Federal government would specifically consent to be bound under this article, we believe we have narrowed and clarified the precise areas wherein the Federal government would participate in this form of compact.

APPROACH III -- TRI-PARTY FEDERAL-STATE COMPACT

The committee is aware of the fact that the tri-party compact is a relatively new concept in that only one or two compacts have historically utilized this concept. However, we feel that the factual and political situation involved in the presently proposed compact are such that the interests of the United States and of its Indian wards can best be represented and protected in a tri-party compact where the Federal government has equal voice and authority in administering and enforc the compact provisions.

As we have mentioned previously herein, this is not the usual compact situation where the Federal government is only minimal or indirectly involved in the subject matter. To the contrary; in this case the major subject matter is conceded by all concerned to consist of vested or claimed rights of the United States or its wards. In this circumstance it seems to this committee that the desirability, indeed the necessity, for full representation and participation by the United States in the administration of the compact provisions is practically self-evident.

Since a policy decision to encourage a compact in this area has been made, we see very little alternative to adequate safeguards for Federal interests other than full voice in the administration and enforcement of the compact provisions.

Approach II, although providing some protection for Federal interests, obviously places the Federal government in a subservient role in that we have no meaningful vote or voice on the compact commission; and, further, not being a party to the compact, we would be in a tenuous position if it became necessar to seek enforcement of any compact provision.

For the above reasons, among others, it is the unanimous recommendation and urging of this committee that Approach III, the tri-party approach, be adopted as the consolidated Federal position in any future negotiations concerning this compact.

Attachment E contains a detailed version of a proposed tri-party compact and there is attached thereto a rationale for each proposed change in terminology from A. B. 1350.

The major elements in the tri-party compact approach may be summarized as follows:

Articles I and II: Purposes and Definitions

Federal government has been added as a signatory party.

Article IV: The California-Nevada Compact Commission

This article has been extensively revised to permit full and equal representation on the commission by the Federal government Each state and the Federal government is given an equal vote on all matters coming before the commission, with the right of veto in any party. Likewise, each party is to share equally in the expenses and duties of the commission.

Articles VI and VII -- Truckee and Carson River Basins

The same changes are here made as discussed under Approach II above, and for the same reasons.

Article VIII -- Walker River Basin

This article has been extensively rewritten to, inter alia, provide: protection for the potential claims of the Walker River Indians; to clarify storage rights in Weber Reservoir; to eliminate preferential treatment to Antelope Valley water users; and to avoid unnecessary conflict and confusion by deleting provisions for extrajudicial watermasters.

Article XXI -- Nonimpairment of Rights of United States

Substantially same changes as in Approach II for same reasons. We have added in this approach, however, a clause expressly reserving to Congress the right to withdraw the United States as a party to this compact or to otherwise modify the terms, conditions or provisions under which the United States may remain a party.

Article XXII -- Ratification and Consent

Since the Federal government would become an equal party under this approach, no consent to specific provisions of the compact would be necessary since we would be agreeing to the terms and conditions of the entire compact. Authority, however, is reserved in Congress to terminate the compact at any future time.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

After long and arduous study and consideration, and for the reasons expressed hereinabove, it is the conclusion and recommendation of this committee that the consolidated Federal position, with respect to future negotiations on the proposed California-Nevada Interstate Compact, be the tri-party approach as suggested by Approach III attached hereto (Attachment E).

Obviously it would be impractical for the committee to endeavor in this report to discuss each and every consideration which preceded the committee's judgment in selecting the proposed terminology in the foregoing three approaches. We have here and in our attached "rationales" endeavored to cover some of these factors; however, in view of the fact that Mr. Riter, the Federal Representative, and his legal counsel, Mr. Renda, were present during our deliberations, they are generally informed concerning the reasons for our respective determinations and recommendations. In this regard it might also be suggested that it would be helpful to the Federal negotiator to have one or more members of this committee available for consultation prior to or during his negotiations in the event additional clarification or assistance may be needed. We would be happy to provide such assistance as may be necessary.

For additional convenience we have also attached hereto, as Attachment F, a copy of A. B. 1350 as finally approved by the Governor of California.

We feel that it is desirable to control the circulation of the proposed versions of the three approaches discussed and submitted herewith; 100 copies have been made of Attachments C, D and E. The copies are numbered from 1 to 100 and in each instance the copy numbered 1 is attached to the original of this report.

The recipients of copies of this report and a notation as to the numbered copies they have received are set forth in Attachment G.

Because of the sensitive nature of these documents, no distribution has been made other than that listed herein. The distributees are hereby requested not to make any copies or further distribution of these documents unless specifically authorized by the Secretary of the Interior or the Director of the Office of Management and Budget.

Respectfully submitted,

John D. Findlay Member	George W. Hedden Member	Robert J. Pafford, J Member

William M. Monroe

William M. Monroe
Chairman

Attachments

DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 1969
UNITED STATES
DEPARTMENT OF THE [illegible]
OFFICE OF THE [illegible]
SACRAMENTO [illegible]

JAN 14
1969

Dear Mr. Zwick:

This responds to your request for the views of this Department on the draft California-Nevada Interstate Compact concerning waters of Lake Tahoe, Truckee River, Carson River and Walker River Basins.

We recommend that the Federal Government oppose the draft compact as it stands for the reasons stated below, including most particularly its adverse effect on Pyramid Lake. We believe, however, that a revised compact, acceptable to the United States, California and Nevada, can be negotiated and we recommend that the Federal Government now propose such negotiations.

As noted in a letter of August 1, 1968, to Mr. R. Riter, Federal Representative on the Compact Commission, from the Chairman of the California Commission and the Chairman of the Nevada Commission, the United States owns or controls virtually all the storage and diversion facilities on the Truckee and Carson Rivers and at Lake Tahoe. The rights of the United States on the Truckee River include the right to store water in Lake Tahoe between certain levels (described in the discussion of article V below) and the right to irrigation water for the Newlands project. On the Carson River the rights of the United States effectively preempt the flow of the river as of 1902. The United States supports the Winters' doctrine claim of the Pyramid Lake Tribe to Truckee River waters.

The compact goes beyond the usual function of allocating water between party states and purports to bind the Federal Government both as a sovereign and as trustee for Indians. Specifically, paragraph (3) of article XXII provides, among other things, that the compact shall become effective only when Congress has agreed that certain provisions of the compact "shall be binding on the agencies, wards, and instrumentalities of the United States of America." Most seriously affected would be the Winters' doctrine rights of the Pyramid Lake Indians. Because of these rights, we believe the United States should not consent to the draft compact as it stands, but should use the opportunity to renegotiate the compact so as to place the Indians in the best position to succeed in the proposed Winters' doctrine litigation.

EXHIBIT "B"

Our position with regard to the Indian water rights is predicated upon the principles enunciated in Winters v. United States, 207 U.S. 564 (1908), and in Arizona v. California, 373 U.S. 546 (1963). We consider that all waters from Lake Tahoe and the Truckee River system other than waters (1) appropriated by the United States for such other purposes as the Newlands project or (2) adjudicated to third parties in litigation to which the United States was a party, as in United States v. Orr Water Ditch Co., et al, Nev. Equity No. A-3, D.C. Nev., September 8, 1944, are reserved for present and future development of the Pyramid Lake Indian Reservation.

From the viewpoint of regional and national interest, the recreational development now underway in the Lake Tahoe area should be continued as the draft compact contemplates, to the extent this can be accomplished without imperiling Pyramid Lake. The maximum 50,000 acre-feet set aside by the draft compact for diversion upstream of the California state line for California use in the Upper Truckee River and for Lake Tahoe uses in both states should not prove a substantial loss to Pyramid Lake. About a third of the 50,000 acre-feet represents already existing uses which would almost certainly be recognized in any Winters' doctrine suit. Some substantial part of the diversions will be returned to the river, presumably after treatment in accordance with applicable water quality standards. Even the complete loss of 50,000 acre-feet would leave an average annual flow into Nevada of 450,000 acre-feet and would also leave available for Pyramid Lake the periodic great flows. There is also an advantage to Pyramid Lake in the setting of a ceiling on the Lake Tahoe and Upper Truckee uses.

Preliminary findings of studies regarding Pyramid Lake which we are conducting are as follows. First, Pyramid Lake is a recreation resource of national significance because of its large area and the recreation, sport fishing, aesthetic, geologic, ecologic, archeologic and historic values it provides. Second, the lake offers greater potential high quality water recreation for large numbers of users than any other lake in Northern Nevada or California, particularly in light of the unique opportunity for optimum recreation development afforded by the Pyramid Lake Indian Tribe's single ownership of the lake and most of its environs. Third, we believe that the recreation potential of the lake is imperiled gravely by the current decline in level due to upstream diversions and uses and prospectively by further decreased inflow if new upstream facilities on the Truckee River should be developed to hold back and divert for other purposes the heavy spring runoffs which the lake now receives. Therefore, we propose negotiation of a revised compact which, together with a resolution of the other difficulties discussed herein, contains a recognition of the right of the United States to proceed with the Winters' doctrine litigation and the corresponding duty of all parties to be bound by the results of that litigation.

We hope to conclude in the near future studies which will show more clearly the relationship of Lake Tahoe and Upper Truckee River uses to maintenance of the level of Pyramid Lake. Even if the studies compel a modification of our position, we believe that negotiation of an acceptable compromise may be possible.

A brief description of the substantive provisions of the compact and their effect upon United States and Indian rights follows. A majority of the indicated problems could be resolved through negotiation.

Article I expresses the compact purpose to apportion between California and Nevada the water of the three rivers and Lake Tahoe.

Article II defines the terms used in the compact. The definition of the "Walker River Basin" should be modified to indicate that Walker Lake is in the Walker River Basin.

Article III contains general language with regard to "Sovereign Relationships."

Article IV establishes the composition, financing, procedure, and general powers of the Commission.

Article IV provides for one United States representative who shall be ex-officio chairman of the Commission without vote and who shall not be a domiciliary of or reside in either state. By reason of the substantial Federal interest in the area and the fact that the United States would be bound by the key provisions of the compact, the Federal representative should be a voting member of the Commission. In addition, the prohibition on domicile and residence appears to imply a belief on the part of the negotiators that a United States representative residing in Nevada or California would be biased in favor of the state of his residence. We cannot accept this implication. Further, the rather detailed formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Indian Tribe for Truckee River water, but does not provide for tribal representation. Therefore, the terms of the United States representation should be revised and full Indian representation assured.

Article V deals with the allocation of water within the Lake Tahoe Basin. It confirms United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet (Lake Tahoe datum). However, storage rights of the United States in Lake Tahoe run to an elevation of 6230 feet in the decree entered in the case of *United States v. Truckee Carson General Electric Company*, in the District Court of the United States, Northern District of California, Second Division, on June 4, 1915. The figure 6229.1 feet is not descriptive of the storage rights of the United States, but of the agreement of the United States in the Truckee River Agreement of June 13, 1935, that the Truckee-Carson Irrigation District will operate the outlet works in such a manner as to prevent, as far as possible, high water damage. Operating criteria, intended to prevent, insofar as possible, the lake elevation exceeding 6229.1 feet were agreed upon, but the latter figure is not the upper limit of the United States storage right. The storage rights of the United States are not affected by the 1935 contract. Therefore, the upper elevation of United States storage stated in the compact should be 6230 feet.

The major provision of article V permits total annual gross diversions of 34,000 acre-feet annually for use within the Lake Tahoe Basin, of which 23,000 acre-feet are allocated to California and 11,000 acre-feet are allocated to the State of Nevada. The allocation of 34,000 acre-feet is premised upon the construction of an overflow weir with a crest elevation of 6223 feet. The construction of such a weir would allow additional water to be developed from Lake Tahoe by enlarging the overflow cross-section of a present natural physical barrier above the outflow works which restricts the rate of flow between elevations 6225 and the low-water mark of 6223 feet. The lowering of the lake under the circumstances established in the compact would be allowable under the 1915 decree in which the United States acquired its storage rights in Lake Tahoe. In addition, recognizing that the construction of the weir may be some time later than the effective date of the compact, the states may use the same amount of water, 34,000 acre-feet, in the interim before the weir is actually built. Part of the 34,000 acre-feet is already being used within the basin.

Article VI of the compact allocates water of the Truckee River in the following order of relative priority as between the states. First, to Nevada the amounts provided for in the decree of *United States v. Orr Ditch Company* for irrigation on the Pyramid Lake Indian Reservation. Second, California is given the right to divert 10,000 acre-feet per year which may be stored when the flow in the channel of the Truckee River exceeds the so-called Floriston rate of 500 cubic feet per second. Current use under present rights is estimated at 8500 acre-feet. Under the 1915 decree some of the water in the Truckee River in excess of the Floristan rate of 500 c.f.s. is "reserved" water of the United States.

California would also receive 6000 acre-feet annually from the conservation yield of Stampede Reservoir. This would appear to recognize the allocation of water to California under the Washoe Project Act. After the water allocated to California has been developed, California also may develop additional yields of water in California subject to then existing beneficial uses in Nevada. The beneficial use so recognized in the compact for this purpose for the Pyramid Lake Indian Reservation would be the amount of water stated in the Orr Ditch decree for agricultural use plus such additional domestic or municipal water as may have been then developed. In order to obtain this water Pyramid Lake development would have to precede the future development in California.

This provision is unacceptable. We would want express recognition in the compact of the right of the tribe to litigate its Winters' doctrine claim for Truckee River water.

Article VII allocates the waters of the Carson River in the following order of priority between the states. First, to California, a right to divert water from the West Fork to irrigate an additional 5600 acres. California is also given the right to store 2000 acre-feet per year within Alpine County for supplemental use on presently irrigable land, such storage to be adverse to Lahonton Reservoir but subject to other existing uses within Nevada. Nevada is allocated a right to divert water to irrigate approximately 41,320 acres with a rate of diversion essentially predicated upon alleged existing uses. Each state may also store upstream of Lahontan in existing reservoirs to the extent of their existing capacity and priority. Finally, the Newlands project water rights are recognized, but as inferior to those previously mentioned.

Since 1925, in the case of United States v. Alpine Land Company, the United States has been attempting to establish on a firm judicial basis its storage and diversion right for Lahontan Reservoir in relation to pre-1902 upstream diversion rights. Under proposed findings in that case, the United States essentially would recognize the priority attached to 41,800 acres. The compact would increase the upstream acreage with rights ahead of the United States to 50,740 acres. The increase is not acceptable because it may make necessary greater diversions from the Truckee River for the Newlands project and so adversely affect Pyramid Lake. It is also better that negotiation to settle water rights in the Carson Basin be done within the framework of the Alpine Land Company case rather than in the proposed compact. Accordingly, the compact should be revised to accept the decision of the court in the Alpine Land Company case.

Article VIII allocates the water of the Walker River Basin recognizing, first, the rights established in decree C-125 in the case of the United States v. Walker River Irrigation District, 104 F. 2d 334 (1939). In that case, the Indian rights on the Walker River Indian Reservation were established at a continuous flow of 26.25 cubic feet of water per second during an irrigation season of 180 days for 2100 acres. It appears, however, from the report of the case, that irrigable lands within the Indian reservation amount to approximately 10,000 acres. The court in that case apparently was of the view that the acreage used to measure the reserved water right was the acreage historically shown to have been devoted to irrigated agriculture. The test applied was clearly more narrow than that used in Arizona v. California, 373 U.S. 546 (1963), where the court recognized the Indian right to water for all irrigable acreage within the reservation whether irrigated presently or not. Thus, under the Walker River decree, the Indian reservation has been allocated approximately one-fifth the amount of water to which it would have been entitled if the more generous test of Arizona v. California had been applied. We are, therefore, considering the possibility of reopening the Walker River case. Article VIII should be amended to recognize the right of the Indians to reopen the case, with all parties to be bound by the results.

Articles IX through XX deal with such other subjects as development of ground water and springs, interbasin transfers, suppression of evaporation, nonconsumptive uses and enforcement.

Article XIII states that the use of water for fish, wildlife and recreation is recognized as an inseparable part of the public interest and is beneficial. This is a step forward. However, it does not appear that the compact alone would ratify presently existing fish, wildlife and recreational uses of water which may have heretofore existed without benefit of state recognition. Only the groundwork, i.e., recognition as beneficial, is laid in the compact for further state procedures leading to a water right.

Article XXI purports to protect the rights of the United States. Paragraphs A through D, article XXI, if taken alone, probably would give total protection to all present and future rights of the United States in the four basins which are the subject matter of the compact. However, article XXII, Ratification and Consent, an exception for which is contained in article XXI, would require the United States, by Act of Congress, to agree that the 14 critical paragraphs of the compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian rights in water for Pyramid Lake, those allocating water to upstream users in the Carson River, and those limiting the Indian rights on the Walker River Indian Reservation. Moreover, through cross-references to other sections in the compact, the United States would be bound to still other provisions.

Even if the United States agrees to be bound to the specific water allocation provisions of a renegotiated compact, the exceptions to the article protecting the rights and powers of the United States should not be so broad as to impair other valid rights and powers. For example, although the compact does not address itself to water quality per se, allocations and diversions under the compact could have serious effect upon water quality. Thorough consideration should be given to the quality levels of the water allocated by the compact. For example, if Pyramid Lake is to be of significant value as a national recreation resource, special effort will be required to protect the quality of water flowing into it. We are concerned, therefore, that the exception from impairment of rights and powers of the United States under article XXI might affect existing authority to set and enforce water quality standards under the Federal Water Pollution Control Act, as amended.

We realize that the compact as presently drafted represents an attempt to resolve definitively most of the outstanding questions of interstate water allocation and use in Lake Tahoe and the three river basins. A less ambitious but worthwhile and attainable goal would be a revised compact which constitutes a framework for recognition of existing uses but is flexible enough to accommodate future resolution of remaining conflicting claims. We propose that the Federal Government oppose the compact as it stands, but that it enter into negotiations with the two state commissions as soon as possible to arrive at a compact which is substantially in accordance with the views of this Department and the other Federal agencies with a program interest in the area subject to the compact.

We suggest that the work of negotiation be made the responsibility of a special task force on which this Department, as well as the Department of Justice, should be represented. We would like to be consulted on the naming of the negotiators. We also would like an opportunity to participate in the drafting of instructions to the negotiators.

Sincerely yours,

(sgd) Stewart L. Udall

Secretary of the Interior

Hon. Charles J. Zwick
Director, Bureau of the Budget
Washington, D. C.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

APR 28 1977

Memorandum

To : Legislative Counsel

From : Acting Associate Solicitor, Division of Indian Affairs

Subject: Comment on S-668, 95th Congress; Proposed California-Nevada Interstate Compact

The Department of the Interior has opposed this compact in all of its previous forms. That position should be retained. The present version of the compact presents the identical failing reflected in earlier versions, viz: it fails to recognize and protect the rights of the United States to the use of water in the Truckee, Carson, and Walker River watersheds. The United States holds such rights on its own behalf as well as on behalf of various Indian reservations. Moreover, the issues of entitlement to water and in what quantities is presently before United States District Court in Nevada. Of particular importance are the water rights of the Pyramid Lake Indian Reservation and their endangered fishery. Consistent with past positions the compact is unacceptable unless it provides for a tripartite involvement on the watersheds. Such an approach would appear to be unworkable until there is a judicial resolution of the reserved rights for Pyramid Lake and its fishery. Attached are past memos of the Solicitor's Office opposing the compact in its present form.

William A. Gershuny

Attachments

INTERIOR DEPT.
APR 29 1977
LEGISLATIVE COUNSEL

EXHIBIT "C"

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

d

MAY 25 1979

Mr. James T. McIntyre, Jr.
Director
Office of Management and Budget
Executive Office Building
Washington, D.C. 20530

Subject: Proposed California-Nevada Interstate Compact--Truckee, Carson, and Walker Rivers and Lake Tahoe

Dear Mr. McIntyre:

The negotiation of the subject Compact was authorized by Public Law 84-353 of August 11, 1955. The present draft was ratified by California in 1970 and by Nevada in 1971. Since the latter date, the Compact has been awaiting consideration for Congressional consent under Article I, Section 10, Clause 3 of the U.S. Constitution, most recently under S. 668 which was introduced by Senator Laxalt during the last Congress.

Neither this Department nor the Executive Branch has formally expressed views as to whether the Congress should grant its consent to the present draft nor has there been a report by the Federal Representative as provided by Public Law 84-353. On December 11, 1970, an inter-agency group submitted a report to the then Secretary of the Interior containing a proposed "Consolidated Federal Position" on this issue. This group included representatives from the Departments of Interior, Justice, and Agriculture and all involved constituent agencies. Their report extensively considered all possible alternatives and recommended that the United States oppose the proposal that Congress consent to the present draft Compact. For reasons of which we are not fully cognizant, this recommendation was not acted on and the office of Federal Representative fell vacant and remained so for several years.

Since 1971, in the absence of Congressional action on the draft Compact and in the absence of an official position by the Executive Branch on its adoption, several suits have been filed by interested parties. It is our view that these suits have partially at least been the result of the general

EXHIBIT "D"

feeling that litigation offered the only available method of solution to the many difficult and complex water and other resource issues which are involved since there was no activity as to the Compact. In addition to the states, the parties interested in the cases or issues under the Compact include several Indian tribes (some of the major litigation involves the Pyramid Lake Paiute Tribe), the Truckee-Carson Irrigation District (to which Reclamation supplies water through the facilities of its Newlands Project], and the cities of Reno and Sparks (who have recently approached this Department as to the possibility of obtaining additional water from the Washoe Project to meet new EPA effluent treatment requirements).

As you know, on August 21, 1978, our Regional Solicitor in Denver, Mr. John R. Little, Jr., was appointed by the President as the Federal Representative to the negotiation of the proposed Compact, pursuant to the provisions of Public Law 84-353. In this capacity, Mr. Little has met with representatives of both States and other interests. Both States have expressed their deep concern to him as to the lack of an official position by the Executive Branch on the present Compact draft. They have indicated that it is their belief that they are entitled to know the Government's position and that the lack of such a position is causing hardship to them because they do not know where they stand in respect to the issues addressed by the draft Compact. We are inclined to agree with the view of the States in this respect.

No legislation has yet been introduced in this session providing for Congressional consent to the draft Compact, although we do understand that Senator Laxalt intends to so do. Several of the lawsuits are moving rapidly. These circumstances, together with the Reno-Sparks discussions, have resulted in receipt of informal indications from some of the major competing interests (e.g., State of Nevada and the Pyramid Lake Tribe) that they would be willing to pursue a negotiated settlement of the issues. Negotiations on an issue-by-issue or case-by-case basis would not be feasible or practical here, in our opinion, because of the interrelationships of issues and problems between the watersheds. To the contrary, it is our view and that of the Justice Department that a comprehensive treatment of the various issues, interests and areas is required if settlement negotiations are to have a chance of success and that a reopening of negotiations for a Compact under Public Law 84-353 would be the preferred vehicle.

We accordingly believe that it is essential that the Executive Branch take a firm public position opposing Congressional consent to the present draft Compact at this time. Such an action will provide the climate which is necessary to enable the proposed settlement negotiations to proceed. As long as there remains the hope, however faint, that the Congress will consent to the draft Compact without opposition from the Executive Branch, we are convinced that certain interests will not have the neccessary incentive to negotiate. Further, unless the present opportunity to so proceed is grasped, we are concerned that some of the several lawsuits may proceed to a point where the option of negotiation and accommodation may be foreclosed, the possibility of a comprehensive solution may be lost and a fractionalized and probably unsatisfactory answer will be provided piecemeal by the courts as the litigation proceeds.

In practical terms, it is generally understood that the situation here presents one of the most complex and difficult series of resource management problems in the country involving tribal, irrigation, municipal and industrial, and wildlife interests, among others. Since the water supply is limited and identified or asserted demands exceed the supply, and reallocation of supply to one interest will generally be at the expense of one or more of the others. Because of these complexities, we consider that it offers a show-case opportunity to put into practice the directive contained in the President's Water Policy that Federal water issues be settled by negotiation rather than litigation. While the outcome of the proposed negotiation is far from certain, we are convinced that the opportunity to seek a solution by accommodation must be pursued and that a clear and specific statement of opposition to the Compact draft is a necessary prerequisite thereto.

By way of further background, the proposed Compact purports to apportion the water of the Carson, Walker, and Truckee Rivers and Lake Tahoe between the States of California and Nevada. The present draft is not the most common type of interstate water compact. Historically, such compacts have been concerned with situations where two or more compacting states have attempted to resolve issues of particular applicability and importance to them, with a minimum, if any, direct Federal interest in the subject matter of the Compact. Thus, in the normal compact situation, the compacting states have agreed on a formula to resolve their differences and have asked Congress to furnish its consent-, which it almost invariably gave; subject, however, to a disclaimer as to any effect upon Federal laws, properties, rights or projects.

The draft Compact, however, goes beyond the usual function of a compact in that it seeks to bind the Federal Government, both as a sovereign and as trustee for Indians, to a number of provisions in the Compact.[1] The reason for this unusual approach is quite clearly stated in a letter of August 1, 1968 from the California-Nevada Interstate Compact Commission to the Federal representative wherein they said:

> The United States owns or controls virtually all of the storage and diversion facilities on the Truckee and Carson Rivers and Lake Tahoe. If it does not agree to the allocations to each of the two states, obviously such allocations are of no force or effect.

In other words, the proposed draft Compact is not merely seeking to resolve issues in which the United States has only a passing interest; to the contrary, the issues addressed in the proposed Compact are of extreme importance to the United States and the interest of the United States are not adequately recognized or protected in the provisions of the draft. In spite of this situation, the negotiations, format, and Congressional consent procedures followed in the proposal of this Compact are all based upon the procedures used when there is little or no Federal interest involved. We believe that circumstances in this matter are such that the United States should insist upon a Federal-interstate Compact of the type pioneered by the Delaware River Basin Compact of 1961 wherein the United States is a signatory party of equal standing with the signatory states and entitled to equal voice in the administration of the Compact.[2]

1/ Paragraph (3) of Article XXII provides, among other things, that the compact shall become effective only when Congress has agreed that certain provisions of the Compact "shall be binding on the agencies, wards, and instrumentalities of the United States of America."

2/ Other Compacts have subsequently taken on the Federal-Interstate form where substantial Federal interests are concerned. See Delaware River Basin Compact (PL-87-328) and the Susquehanna River Basin Compact (PL-91-575)

We are attaching to this letter a brief analysis of the proposed draft Compact including a discussion of the Federal interests involved, a synopsis of the history of Compact negotiations and comments on specific provisions of the draft. This generally comprises the basic tenets of what we believe the Federal position should be as to the draft Compact. We call particular attention to one portion of this position, namely the concept that the United States should become a full participating party to the Compact. We recognize that this does not accord with normal practice. However, we believe that the large Federal investment and significant Federal interests which are involved here clearly justify an exception to the general rule and, indeed, demand that in the proposed renegotiation consideration be given to the idea that the United States assume a full participating role in this Compact.

It is noted that the posture as to the draft Compact suggested in the attachment is essentially that which was recommended as the "Proposed Consolidated Federal Position" by the 1970 inter-agency task group. It is requested that you authorize Federal Representative Little to call a Conference between all involved Federal Departments and agencies to obtain their concurrence to this position and to thereupon advise the two States of the Federal position in opposition to the present draft Compact and calling for renewed negotiations.

We believe that time is of the essence if the present opportunity to negotiate is to have a chance of success. Accordingly, a response by June 15 is requested.

Sincerely,

Cecil D. Andrus

Secretary

Analysis of Draft California-Nevada Compact--Truckee, Carson and Walker River and Lake Tahoe Basins

Federal Interests Involved in the Proposed Compact

For nearly 75 years the United States has been involved in obtaining and perfecting water rights in the basins here concerned. As already indicated, the United States also owns or controls virtually all of the storage and diversion facilities in these basins.

It would take a great deal of time and print to describe all of the various water rights, claims, and facilities of the United States in the areas concerned. However, for the purpose of this report the major United States interests may be briefly stated as follows:

1. The Newlands Project

The U.S. Bureau of Reclamation's Newlands Project in the Truckee-Carson area was one of the first reclamation projects completed under the Reclamation Act of June 17, 1902. (See attached map which shows and describes the major features of the Newlands Project and other facilities in the area.) The purpose of the project was to provide irrigation waters to the arid lands in the Lahontan Valley near Fallon, Nevada. This project is presently providing water to irrigate some 60-65,000 acres of land through the use of 900 miles of canals, laterals, and drains.

2. Pyramid Lake and Pyramid Lake Reservation

Pyramid Lake is located at the terminus of the Truckee River and is the habitat of the Lahontan cutthroat trout and the cui-ui, which compose the Pyramid Lake fishery and which are, respectively, on the Endangered Species Act threatened and endangered lists.

Pyramid Lake also contains Anaho Island National Wildlife Refuge, an island of almost 750 acres administered by the U.S. Fish and Wildlife Service. The island hosts one of the largest white pelican rookeries in the United States.

Effective in 1859, President Grant created the Pyramid Lake Indian Reservation by executive Order when approximately

475,000 acres of land surrounding and including Pyramid Lake were set aside for the use of the Pyramid Lake Paiute Tribe of Indians. The Tribe and the United States, on behalf of the Tribe, claim a reserved right to the use of the Truckee River water for the maintenance and preservation of Pyramid Lake as a fishery.

3. Stillwater Wildlife Management Area and National Wildlife Refuge

For many years prior to the construction of the Newlands Project the terminus of the Carson River consisted of a series of marshes which were known as the Stillwater Marshes and were heavily utilized as a natural waterfowl habitat. Subsequently, due to the Newlands Project, the waters reaching the Stillwater Marshes was drastically reduced and the waterfowl habitat was in danger of extinction. As a result of this situation, the Department of the Interior and the Nevada Fish and Game Commission entered into an agreement with the Truckee-Carson Irrigation District (TCID) to utilize some 163,000 acres of land as the Stillwater Wildlife Management area of which some 24,200 acres were reserved as the Stillwater National Wildlife Refuge. This area is a very important link in one of the Pacific coast international flyways.

4. Lake Tahoe

Aside from recreation uses which are of major importance to the proposed compacting states, as well as to the United States, Lake Tahoe is also utilized as a part of the Newlands Project as a regulating storage reservoir to supplement irrigation flows to the irrigated lands in Nevada. There are also several major national forests in the Tahoe area which rely upon the Tahoe-Truckee basins for their water needs.

5. Walker River Reservation

Walker Lake is at the terminus of Walker River and here too, the United States established an Indian Reservation. By Executive Order of March 19, 1874, the President created the Walker River Reservation consisting of approximately 323,000 acres. It was set aside for the use of the Walker River Paiute Tribe and includes a portion of Walker Lake. A substantial segment of the Walker River flows within the boundaries of the reservation.

6. Litigation

In establishing its claims for water in the areas here concerned over the last three quarters of a century, the United States has initiated a series of lawsuits which have involved literally thousands of parties and millions of dollars. The major lawsuits are:

a. U.S. v. Truckee River General Electric Company (USDC, ED California, Civil No. S643 TJM)

A condemnation suit whereby the United States acquired the right to store approximately 732,000 acre feet of water in Lake Tahoe to be used as a regulating reservoir for purposes of the Newlands Project. Final judgment was entered in 1915.

b. U.S. v. Orr Water Ditch Company, et al (USDC, Nevada, Equity No. A-3)

A general water adjudication suit wherein the United States claimed water for the Pyramid Lake Indian Reservation and the Newlands Project. Final judgment was entered in 1944 confirming the claims of the United States.

c. U.S. v. Alpine Land and Reservoir Company et al (USDC, Nevada, No. D-183)

The United States initiated this general stream adjudication as to the waters of the Carson River on May 11, 1925 to obtain judicial confirmation of its claims to certain waters of the Carson River for use on the Newlands Project. This case has not yet reached final judgment for a variety of reasons but is now very close to entry of a final decree. A temporary restraining order issued on March 25, 1950 setting temporary priorities and procedures for Carson River waters is still in effect.

d. U.S. v. Truckee-Carson Irrigation District et al (USDC, Nevada, Civil No. R2987, JBA)

This suit alone involves some 17,000 defendants and is a suit on behalf of the Pyramid Lake Indians seeking to obtain judicial concurrence in a claim of a reserved right to sufficient water to assure the maintenance of Pyramid Lake as a fishery. The case was decided against the United States in the District Court but is presently pending before the United States Circuit Court of Appeals for the 9th Circuit. (The District Court held that the matter was res judicata based upon the Orr-Ditch decree, above.)

e. Carson-Truckee Water Conservancy District, et al v. Secretary of the Interior, et al (USDC, Nevada, Civil No. R 76152 BRT)

The issue concerned here is the authority of the Secretary to utilize waters stored in Stampede Reservoir as a means of enhancing the Pyramid Lake Fishery and the rights of the Conservancy District to water stored in Stampede.

f. U.S. v. Walker River Irrigation District, et al (USDC, Nevada, Equity No. C-125)

This was a general water adjudication suit brought primarily to establish the irrigation water rights of the Walker River Indian Reservation. A final decree was entered by the court in 1936 and amended in 1940.

All of the foregoing pending cases, as well as the cases having final judgment would be affected in some form by the proposed compact.

The water rights involved in the litigation will directly affect the flows of the Truckee, Carson, and Walker Rivers.

Brief History of Compact and Federal Position

On August 11, 1955, Public Law 84-353 was enacted whereby Congress granted consent to "the States of California and Nevada to negotiate and enter into a compact with respect to the distribution and use of the waters of the Truckee, Carson, and Walker Rivers, Lake Tahoe, and the tributaries of such rivers and lake in such States." The statute went on to provide that such consent was given upon the following conditions. "(1) a representative of the United States, who shall be appointed by the President of the United States, shall participate in such negotiations and shall make a report to the President and to the Congress of the proceedings and of any compact entered into. (2) Such compact shall not be binding or obligatory upon either of such States unless and until it has been ratified in the legislature of each such State and consented to by the Congress of the United States."

The States of California and Nevada in 1955 each created a Commission for the purpose of negotiating an interstate compact to provide for interstate allocation and use of the designated waters. Mr. Robert J. Newell was the first Federal representative designated by the President. He acted in that capacity until July 1967 when Mr. J. R. Riter of the Bureau of Reclamation's Denver Engineering Center was appointed and served until 1971. There was no Federal representative thereafter until January 1977, when the departing President Ford appointed Mr. R. H. Smith as the representative. President Carter has recently named a new Federal representative, Mr. John R. Little, Jr. who is Regional Solicitor for the Department of the Interior in Denver.

The Federal representative was the nominal chairman of the joint California-Nevada Interstate Compact Commission from its inception. We say nominal in that he was without vote. After approximately 13 years of negotiations, the Joint Commission adopted a proposed compact on July 25, 1968. The proposed compact was approved by the California Legislature in September of 1970, and by the Nevada Legislature in March, 1971.

In September of 1970, this Department was requested by the Office of Management and Budget to take the lead responsibility in developing a Federal position on the proposed compact. A draft position was developed by an inter-agency committee and was approved by the Secretary and submitted in 1971 to the then-incumbent Administration. The position was not released, and no significant action has taken place since that time on the Federal position, in compact negotiations, or on the compact.

The approach in the 1971 position is favored by this Department and is represented in this report which includes a number of specific amendments to the proposed compact. We would, among other changes, establish a tri-partite agreement among the States of California and Nevada and the United States, in which the United States would be an equal partner with the States in the administration of the compact, and in which Federal rights would be protected in the instrument.

The compact approach has been used successfully many times in the past to resolve interstate water controversies and it was selected here as a potential solution to the water issues that have remained unresolved in the Tahoe area for decades. However, because of its substantial interest in the area, the United States should not consent to the draft compact as it stands. Although we support the compact approach we believe it is necessary to undertake renewed negotiations to develop a suitably amended compact which the United States could support.

Comments on Specific Provisions of the Draft, Compact

A brief description of the substantive provisions of the compact, their effect upon United States and Indian rights and some of our proposed changes, follows. We believe that most, if not all, of the indicated problems could be resolved through negotiation.

Article I expresses the Compact purpose to apportion between California and Nevada the water of the three rivers and Lake Tahoe. We would amend this to allow inclusion of the United States.

Article II defines the terms used in the compact. The definition of the "Walker River Basin" should be modified to indicate that Walker Lake is in the Walker River Basin. The United States should be added as a signatory party. Additional definitions should be added for significant court decrees, and for the terms "beneficial use" and "developed additional yields."

Article III contains general language with regard to "Sovereign Relationships." This should be modified to recognize rights of the United States.

Article IV establishes the composition, financing, procedure, and general powers of the Commission.

Article IV provides for one United States representative who shall be ex-officio chairman of the Commission without vote and who shall not be a domiciliary of or reside in either state. By reason of the substantial Federal interest in the area this article should be extensively revised to permit full and equal representation on the commission by the Federal Government. Each state and the Federal Government should be given an equal vote on all matters coming before the commission, with the right to veto in any party. Likewise, each party should share equally in the expenses and duties of the commission.

In addition, the prohibition on domicile and residence appears to imply a belief on the part of the negotiators that a United States representative residing in Nevada or California would be biased in favor of the State of his residence. We cannot accept this implication. Further, the rather detailed formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Indian Tribe for Truckee River water, but does not provide for tribal representation. Therefore, the terms of the United States representation should be revised and Indian representation assured.

Article V deals with the allocation of water within the Lake Tahoe Basin. The major provision of Article V permits total gross diversions of 34,000 acre-feet annually for use within the Lake Tahoe Basin, of which 23,000 acre-feet are allocated to California and 11,000 acre-feet are allocated to the State of Nevada. The allocation of 34,000 acre-feet is premised upon the construction of an overflow weir with a crest elevation of 6223 feet. The construction of such a weir would allow additional water to be developed from Lake Tahoe by enlarging the overflow cross-section of a present natural physical barrier above the outflow works which restricts the rate of flow between elevations 6225 and the low-water mark of 6223 feet. The lowering of the lake under the circumstances established in the compact would be allowable under the 1915 decree in which the United States acquired its storage rights in Lake Tahoe. In addition, recognizing that the construction of the weir may be some time later than the effective date of the compact, the states may use the same amount of water, 34,000 acre-feet, in the interim before the weir is actually built. Much of the 34,000 acre-feet is already being used within the basin.

Article V also confirms United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet. (Lake Tahoe datum). However, storage rights of the United States in Lake Tahoe run to the maximum elevation of Lake Tahoe as expressed in the 1915 Tahoe decree. The figure 6229.1 feet is not descriptive of the maximum storage rights of the United States as provided in the 1915 decree, but is mentioned in the agreement of the United States known as the Truckee River Agreement of June 13, 1935, in the context that the Truckee-Carson Irrigation District will operate the outlet works in such a manner as to prevent, as far as possible, high water damage. Operating criteria were agreed upon to prevent, insofar as possible, the lake elevation exceeding 6229.1, but the latter figure is not the upper limit of the United States storage rights which were not affected by the 1935 contract. Therefore, the storage rights of the United States in Lake Tahoe stated in the compact should be as those rights are defined in the 1915 Lake Tahoe Decree and the 1944 Truckee river Decree. We believe that Section C of Article V is in conflict with existing court decrees and should be deleted.

Article VI of the Compact allocates water of the Truckee River in the following order of relative priority as between the states. First, allocated to Nevada are the amount provided for in the decree of United States v. Orr Ditch Company for irrigation on the Pyramid Lake Indian Reservation. Secondly, California is given the right to divert 10,000 acre-feet per year which may be stored when the flow in the channel of the Truckee river exceeds the so-called Floristan rate of 500 cubic feet per second. Current use under present rights is estimated at 8500 acre-feet. Under the 1915 decree some of the water in the Truckee River in excess of the Floristan rate of 500 c.f.s. is "reserved" water of the United States.

California would also receive 6000 acre-feet annually from the conservation yield of Stampede Reservoir. This would appear to recognize the allocation of water to California under the Washoe Project Act.

After the water allocated to California has been developed, California also may develop additional yields of water in California subject to then existing beneficial uses in Nevada. The beneficial use so recognized in the Compact for this purpose for the Pyramid Lake Indian Reservation would be the amount of water stated in the Orr Ditch decree for agricultural use plus such additional domestic or municipal water as may have been then developed. In order to obtain this water, Pyramid Lake development would have to precede the future development in California. This provision is unacceptable.

Unless the matter is settled by negotiation and the settlement included in a redrafted Compact, we would want express recognition in the Compact of the right to the tribe to continue to litigate its Winters' doctrine claim for Truckee River water. We also would want express recognition of the 1915 Lake Tahoe Decree and the 1944 Truckee River (Orr Ditch) Decree, and express protection of the Stillwater Wildlife Management area, including the right to use of runoff waters from the Newlands project.

Article VII allocates the waters of the Carson River in the following order of priority between the states. First, to California, a right to divert water from the West Fork for irrigation and nonirrigation uses as to an additional 5600 acres and from the East Fork for irrigation and nonirrigation uses as to an additional 3820 acres. California is also given the right to store 2000 acre-feet per year within Alpine County for supplemental use on presently irrigable land, such storage to be adverse to Lahonton Reservoir but subject to other existing uses within Nevada.

Nevada is allocated a right to divert water to irrigate approximately 41,320 acres with a rate of diversion essentially predicated upon alleged existing uses. Each state may also store upstream of Lahontan in existing reservoirs to the extent of their existing capacity and priority. Finally, the Newlands project water rights are recognized, but as inferior to those previously mentioned.

Since 1925, in the case of United States v. Alpine Land Company, the United States has been attempting to establish on a firm judicial basis its storage and diversion right for Lahontan Reservoir in relation to pre-1902 upstream diversion rights. Under proposed findings in that case, the United States essentially would recognize the priority attached to 41,800 acres. The Compact would increase the upstream acreage with rights ahead of the United States to 50,740 acres. The increase is not acceptable because it may make necessary greater diversions from the Truckee River for the Newlands project and so adversely affect Pyramid Lake.

We would hope that the issues involved in the Alpine case will be settled and the terms thereof included in a new draft Compact. If this is not possible, since Article VII in essence vitiates the claimed rights and priorities of the Federal Government as alleged in the pending Alpine case, the article should be rewritten to provide for recognition of the present interim decrees in that case and for acceptance of the final decree therein when issued. The Departments of the Interior and Justice feel that such amendments are necessary under any form of compact to permit final judicial adjudication of the Carson River.

Article VIII allocates the water of the Walker River Basin recognizing, first, the rights established in the case of *United States* v. *Walker River Irrigation District*. In that case, the Indian rights on the Walker River Indian Reservation were established at a continuous flow of 26.25 cubic feet of water per second during an irrigation season of 180 days for 2100 acres. It appears, however, that irrigable lands within the Indian reservation amount to approximately 10,000 acres. The court in that case apparently was of the view that the acreage used to measure the reserved water right was the acreage historically shown to have been devoted to irrigated agriculture. The test applied was clearly more narrow than that used in *Arizona* v. *California*, 373 U.S. 546 (1963), where the court recognized the Indian right to water for irrigable acreage within the reservation whether irrigated presently or not. Thus, under the *Walker River* Decree, the Indian reservation has been allocated *far less* than the amount of water to which it could be entitled if the more generous test of *Arizona* v. *California* were applied. Article VIII allots a maximum of *13,000* additional acre-feet of water per year from storage and an additional 9,450 acre-feet to be diverted from natural flow with priority dates for both allocations of 1933. These allocations were made unilaterally by the States and should be subject to negotiation and approval by the United States and the Indians. It may be that circumstances would warrant a much higher share of the water for the reservation.

Article VIII should be further amended to clarify storage rights in Weber Reservoir to eliminate preferential treatment to Antelope Valley water users, and to avoid unnecessary conflict and confusion by deleting provisions for jointly appointed watermasters.

Articles IX through XX deals with such other subjects as development of groundwater and springs, interbasin transfers, suppression of evaporation, nonconsumptive uses and enforcement.

Article XIII states that the use of water for fish, wildlife, and recreation is recognized as an inseparable part of the public interest and is beneficial. This is a step forward. However, it does not appear that the compact alone would ratify presently existing fish, wildlife, and recreational uses of water which may have heretofore existed without benefit of state recognition. Only the groundwork, i.e., recognition as beneficial, is laid in the Compact for further state procedures leading to a water right.

Article XXI purports to protect the rights of the United States. Paragraphs A through D, Article XXI, if taken alone, probably would give total protection to all present and future rights of the United States in the four basins which are the subject matter of the Compact. However, Article XXII, Ratification and Consent, which is excepted from Article XXI, would require in subsection (3) that the United States, by Act of Congress, agree that the 14 critical paragraphs of the Compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian rights in water for Pyramid Lake, those allocating water to upstream users in the Carson River, and those limiting the Indian rights on the Walker River Indian Reservation. Moreover, through cross-references to other sections in the Compact, the United States would be bound to still other provisions. Article XXII (3), should be deleted. We would also add provisions to strengthen Article XXI. Even if the United States agrees to be bound to the specific water allocation provisions of a renegotiated Compact, the exceptions to the article protecting the rights and powers of the United States should not be so broad as to impair other valid rights of powers. For example, although the Compact does not address itself to water quality per se, allocations and diversions under the Compact could have serious effect upon water quality. Thorough consideration should be given to the quality levels of the water allocated by the Compact. For example, if Pyramid Lake is to be of significant value as a national recreation resource, special effort will be required to protect the quality of water flowing into it.

We are concerned, therefore, that the exception from impairment of rights and powers of the United States under Article XXI might affect existing authority to set and enforce water quality standards under the Federal Water Pollution Control Act, as amended.

In addition to these considerations concerning the present draft, there are other issues involved in some of the litigation that would need to be addressed in a renegotiated Compact which was used as the vehicle for a comprehensive settlement.

We recognize that the Compact as presently drafted represents an attempt to resolve definitively most of the outstanding questions of interstate water allocation and use in Lake Tahoe and the three river basins. We believe that the Compact approach can and should be utilized for these purposes. However, we also believe that the present form and content does not satisfactorily accomplish these objectives. This Department accordingly opposes the compact as it stands, but we propose that we enter into negotiations with the two state commissions as soon as possible to arrive at a compact which is substantially in accordance with the views of this Department and the other Federal agencies, as set forth above.

The Truckee River: Just how dirty is it?

By Jim [illegible]/Gazette-Journal

Roy Dorf says he's seen enough.

The Truckee River near his Fernley home has gotten filthy, he says, and on holidays when Reno is jammed with tourists — and the sewage treatment plant upstream is working overtime — he can walk down to the banks and smell the pollution.

"Sometimes the river is so damn green it's putrid," says Dorf, a [illegible]-year resident of the area. "If you don't believe me, just go down there and smell it for yourself."

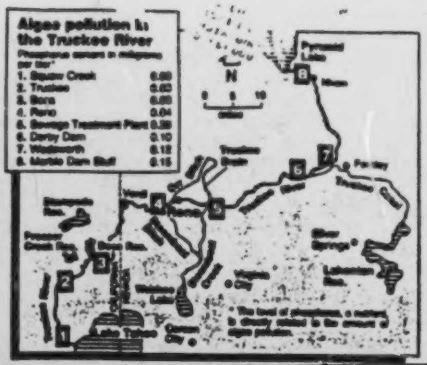
Dorf isn't the only one worried about the quality of the lower Truckee River. The Pyramid Lake Paiute Indian Tribe is suing Reno and Sparks over river pollution. And operators of the Reno-Sparks Joint Sewage Treatment Plant — located at a bend in the river where clear water is suddenly clouded by foul-smelling runoff — are in the middle of a major project to further purify the plant's effluent.

California and Nevada officials agree the Truckee needs help, but the problem has them pointing fingers at each other and questioning whether their neighbor is doing enough to protect the river.

It's a feud that began [illegible] years ago when Nevada farmers complained that California loggers were fouling the river water they used for irrigation. It continues today, with water quality experts blaming their colleagues' sanitary programs.

California may have more room to complain. In recent years it has spent millions on a treatment plant and erosion control programs to ensure that the river's water remains pristine when it crosses the state line near Floriston. The [illegible] treatment facility in Truckee is one of the most modern in the state and isn't allowed to discharge even its [illegible] product directly into the

See TRUCKEE, back page



Algae pollution in the Truckee River

Phosphorus content in milligrams per liter*

1. Squaw Creek	[illegible]
2. Truckee	0.03
3. Boca	0.03
4. Reno	0.04
5. Sewage Treatment Plant	0.3[illegible]
6. Derby Dam	0.10
7. Wadsworth	0.12
8. Marble Dam Bluff	0.15

* The level of phosphorus, a nutrient, is closely related to the amount of algae pollution.

Reno Gazette-Journal Sunday, August 11, 1985—[illegible]A

Truckee River water debate

From page 1A

river. Glenshire, a riverside subdivision east of Truckee, has been ordered to build a $10 million sewer collection system that will cost residents plenty.

"You can't do more than we do," says Roy Hampson, director of California's Lahontan Regional Water Quality Control Board. "We put ourselves in the shoes of Nevadans and asked, 'What would we want if we lived there?' "

The Truckee remains relatively "pristine" as it courses through Reno, Hampson says, but on the outskirts — just as the river flows past the treatment plant — there is a marked deterioration. Hampson blames the treatment plant, which isn't as sophisticated as California's but nonetheless discharges effluent directly into a nearby tributary.

"That kind of plant just wouldn't be allowed in our region," Hampson says. "Not when you're trying to protect the pure waters of the Sierra Nevada."

State Water Quality Engineer Wendell McCurry says the Reno-Sparks plant is only part of the reason why the Truckee can't meet the state's water quality standards after it leaves the Truckee Meadows. Once hampered by breakdowns and toxic waste contamination, the plant today meets state effluent standards and promises to soon be as thorough as the Truckee plant.

The problem, McCurry says, is the filthy discharges coming from Steamboat Creek and the North Truckee Drain, which empty into the river near the treatment plant. These streams wind through gravel pits, past heavily fertilized fields and near several Washoe County neighborhoods that still use septic tanks.

Their union with the clear Truckee is marked on aerial photos by distinct brown plumes. Water quality tests taken where the two meet show a sharp decline in the river's purity.

The explanations don't do much to soothe the angry Californians, some of whom feel they're paying too much to protect a river that Nevada only allows to deteriorate.

They point out that while Californians have been spending millions to put in a high-tech sewer system, residents in Verdi just over the border still use septic tanks. Other Nevada subdivisions also are on septic tanks, even though state officials suspect the sewage is seeping into the Truckee's tributaries.

"No one likes to spend money anyway," says real estate agent Christy Curtis, explaining how some feel about the high cost of Truckee's sewers. "Some balk when they see what's happening down the road."

"It's always a complaint that, 'Why should we have such stringent standards up here when they aren't so strong downstream?' " says Hampson. "Our answer is we have to do what's right. We can't control what's downstream."

Californians had little choice when they agreed to build the plant for the Truckee-Tahoe Sanitation Agency, which collects sewage from five different districts at north Tahoe.

Before the Truckee plant went on line in [illegible], the various sanitation districts were plagued with problems. In Tahoe City, the district pumped sewage into an extinct volcano, and when holding ponds overflowed in [illegible], sewage poured into the Truckee. That same year, when sewage ponds at the Truckee Sanitation District overflowed, someone installed a pipeline that sent only partially treated sewage directly into the river.

The incidents made many in Nevada distrustful, and they pushed to install a pipeline that would carry north Tahoe sewage to Reno for treatment. But Californians declined.

John Gonzales, sanitary engineer at the Reno-Sparks plant, said those incidents — and other California plant failures that have sent sewage discharges into Nevada — have made Californians defensive. He says the Reno-Sparks plant is also a "convenient scapegoat" for those trying to explain pollution in the lower Truckee.

"Californians make me so mad," he says. "They love to pick on Nevada and say things like, 'We're great and they don't know what they are doing.' That's absurd."

Gonzales says his plant will be just as sophisticated as the Truckee facility by [illegible], when workers finish putting in sludge- and nitrogen-removal facilities and better filtration.

As it is, the plant's effluent is much cleaner than the state requires. Plant workers raise goldfish and catfish in an aquarium fed with effluent, and tests show that what's being pumped into Steamboat is actually improving the creek's pathetic condition. The percentage of phosphorus in the effluent is close to Steamboat's, but the creek has much higher flows and a wider variety of polluting nutrients. The difference is clear: the creek is dirtier.

Cleaning up Steamboat and the North Truckee Drain may be more difficult. Unlike their California counterparts, Nevada water officials won't order subdivisions to hook into the sewer system. But they will work with residents to try to secure federal and state funding that helps pay for the project — as California did for Glenshire.

"We've been working at this for [illegible] years," says McCurry, whose office tightened water quality standards for the Truckee last year. "It's frustrating."

That's not to say the state can't get heavy-handed. It is cracking down on industrial polluters whose chemical discharges into the Truckee plagued the treatment plant in [illegible], and several years ago a plant malfunction that dumped sewage into the river for [illegible] minutes brought a $[illegible] fine.

The state has also kept an eye on California, which many feel could do a better job of controlling riverside erosion — a problem that shows up when cloudbursts muddy the river. There are also complaints the commercial rafting on the Truckee near Tahoe City has played havoc with the river's aesthetics and ecosystem.

McCurry says Washoe County, Reno and Sparks will help improve the river's quality by forcing builders to better control erosion. And he said an incentive to get homeowners off septic tanks is the policy of area banks to turn down loans for non-sewered homes.

None of this means too much to the Pyramid Lake Paiutes, who say pollution in the river is killing trout and another fish the tribe is trying to restore.

Tribe attorney Michael Thorp says the Indians want the cities to "come up with a different system" for treating their sewage. He said using the effluent for irrigation — a system that has helped cut down on the pollution of the Carson River — is the "smart answer."

"Their only argument is that they have to put it (the plant) somewhere," Thorp said. "That's why they put it below the cities rather than above them. You don't see people playing around in the river after it flows past that treatment plant."

Thorp said the Indians sued the cities because they were tired of the state and federal Environmental Protection Agency ignoring the Truckee's problem.

"In other states, they are right there," he says. "But in Nevada that doesn't seem to happen."

Meanwhile, the uproar that came from Roy Dorf and his neighbors in Churchill County seems to be dying down. Three years ago, when the Stampede Reservoir was tapped by heavily polluted water that killed fish and left rotting algae on the shoreline, many Fallon residents were worried their wells would be polluted.

"We don't hear as many complaints," says Churchill County Manager Bjorn Selinder. "They've worked diligently to improve the river, and it shows."

Craig [illegible]/Gazette-Journal

WATER TEST: Jack Barber, a Reno-Sparks Sewage Treatment Facility lab technician, tests water samples from the Truckee River and Steamboat Creek.

EXHIBIT "E"

Comments on S. 1558

Scott B. McElroy
Jeanette Wolfley
Native American Rights Fund
1506 Broadway
Boulder, Colorado
(303) 447-8760

Attorneys for the
Walker River Paiute Tribe

The Walker River Reservation was established in 1859 and confirmed by executive order in 1874. See United States v. Walker River Irrigation District, 104 F.2d 334, 338 (9th Cir. 1939). In determining that water had been reserved for use on the Reservation, the Ninth Circuit reviewed the circumstances surrounding the creation of the Reservation, noting that the Reservation was to provide an agricultural base for the Tribe and its members. The Ninth Circuit was correct. From the inception of the Reservation until the present, the federal government has consistently and repeatedly stated its intention to develop an irrigated land base for the Reservation. See, e.g., Letter to A.B. Greenwood, Commissioner of Indian Affairs, from F. Dodge, Indian Agent, dated March 6, 1860; Rehabilitation and Betterment Report, Walker River Indian Reservation, February 1972.

The fact that the initial purpose of the Reservation was to develop an irrigated land base for the Tribe and its members leads the Tribe to conclude that to the extent the lands restored to the Reservation in 1936 are "practicably irrigable", as the Supreme Court used that term in Arizona v. California, 363 U.S. 540, 598-601 (1963), those lands are entitled to a reserved water right. That conclusion is further bolstered by the fact that the lands in question were part of the Reservation as initially established in 1859. The water rights for those lands have not been adjudicated, however. The Tribe is concerned that the Compact may affect its ability to pursue such rights in court.

The Walker River Irrigation District asks Congress to ratify the Compact because in the opinion of the District, the Tribe's unadjudicated claims are without merit. The District argues that a court would look only to the legislative history surrounding the addition of lands to the Reservation in 1936 and totally ignore the earlier history of the Reservation. That novel theory is unlikely to succeed in court. The precise boundaries of the Walker River Reservation have been modified on many occasions. Nevertheless, the Ninth Circuit focused on the creation of the Reservation when it recognized reserved rights for the Reservation as it existed prior to 1936. The Supreme Court in Arizona v. California, supra, 363 U.S. at 599-600, likewise, discussed the events surrounding the creation of the five reservations whose water rights were determined in that litigation, although lands were added to the Reservation at various times pursuant to different authorities. See Decree, 376 U.S. 310 at 344-345. Certainly, the Supreme Court did not find it necessary to review the history of each of those additions.

We also note that although courts look to the purposes envisioned at the time the Reservation is created when determining the existence of reserved rights, it is clear that those rights are to meet the present and future needs of the Reservation, Arizona v. California, supra, and are determined in accordance with current technology. See Report of Special Master Elbert P. Tuttle in Arizona v. California, No. 8, Original, dated February 22, 1982 at 98. ("My reading of the transcript [of the hearings resulting in the 1963 decision] reveals that the evidence of 'practicable irrigability' was determined by then-current standards.") Here, the Tribe's engineers have already determined that at least 10,000 acres within the 1936 addition are economically feasible to irrigate. In short, it is highly unlikely that a court would follow the suggestion of the District and determine the water rights for the 1936 addition without considering the events surrounding the creation of the Reservation and in the intervening years. Those events dictate that, indeed, water would have been reserved for all "practicably irrigable" land within the 1936 addition.

OFFICIAL COMMITTEE FILE
PLEASE RETURN

Washoe County Republican Central Committee
TELEPHONE 786-3146
POST OFFICE BOX 1886 • RENO, NEVADA 89505-1886

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
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NOV 5 1985
WASHINGTON, D.C. 20510

November 1, 1985

Senator James McClure
Chairman Energy and National Resources
Room 360 Dirksen Building
Washington, D. C. 20510

Dear Senator McClure:

The Republican Central Committee of Washoe County, Nevada wishes to urge your committee's support for SB 1558, a bill to settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada and for other purposes.

This bill as proposed is strongly supported because it offers an opportunity to resolve water allocation problems on the Truckee, Carson and Walker River systems.

The "Operating Criteria" to be developed for the Truckee system could resolve many of the problems of water distribution between the Truckee Meadows Area, the Pyramid Lake Tribe of Paiutes, and the Truckee Carson Irrigation District and end the long costly court battles.

It is essential that Title II, the Interstate Compact, of the Act be retained and passed. The Compact was negotiated by Nevada and California after long and hard negotiations and is a working document allocating water of the Truckee, Carson and Walker River systems between the two states. Indian rights are protected and not diminished by the Compact.

Sincerely,

Earl L. Collins

Earl L. Collins
Chairman

ELC:jg

OFFICIA[illegible] FILE
PLEAS[illegible]

Washoe Tribe of Nevada and California
Highway 395 South, Gardnerville, Nevada 89410
702/265-4191 702/883-1446 702/885-5686

Mail Address:
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WASHOE TRIBAL COUNCIL MEMBERS

Chairman
ROBERT L. FRANK
(Reno-Sparks)

Vice-Chairman
BRIAN WALLACE
(Off-Reservation)

BEVERLY J. FRANK
(Woodfords)

DONNALEE WAYNE
(Carson Colony)

MYRNA RIVERA
(Carson Colony)

EUGENE FRANK
(Dresslerville)

RAYMOND PAYNE
(Woodfords)

ROMAINE SMOKEY, JR.
(Dresslerville)

VERNON WYATT
(Off-Reservation)

Secretary Treasurer
A. JO ANN NEVERS
(Appointed)

16 October 1985

SENATE [illegible] ON
ENERGY [illegible]
OCT 2[illegible] 1985

Honorable James McClure, Chairman
Committee on Energy and Natural Resources
United States Senate
358 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator McClure,

I am hereby transmitting a copy of the official testimony of the Washoe Tribe of Nevada and California regarding S. 1558, the "Pyramid Lake Paiute and Truckee River Settlement Act of 1985." I am submitting this testimony to be included in the record of the proceedings of the Committee on Energy and Natural Resources on this bill on Monday, October 21, 1985.

I am including with our testimony the following documents which I request the Committee include in the record:

- A memorandum dated 9 September 1985 to Roland Westergard, Nevada State Engineer and Karen Baggett of Senator Laxalt's office, stating the concerns of the Washoe Tribe.
- A letter dated January 14, 1969 from Secretary of the Interior Stewart Udall to Bureau of the Budget Director Charles Zwick regarding Administration concerns with the California-Nevada Interstate Compact.
- Comments prepared by the Bureau of Indian Affairs on the Interstate Compact.
- Pertinent excerpts from the Alpine Decree.

We appreciate this opportunity to make our concerns known to the Committee.

Sincerely,

Robert L. Frank

Robert L. Frank, Chairman
Washoe Tribe of Nevada and California

cc: Senator Paul Laxalt
    Senator Chic Hecht

TESTIMONY
of
THE WASHOE TRIBE OF NEVADA AND CALIFORNIA
on
THE PYRAMID LAKE PAIUTE AND TRUCKEE RIVER SETTLEMENT ACT OF 1985

I. INTRODUCTION

My name is A. Brian Wallace. I am the Vice-Chairman of the Washoe Tribe of Nevada and California.

The Washoe Tribe of Nevada and California supports the efforts of the Pyramid Lake Paiute Tribe to resolve the many difficulties it has faced over the years in trying to maintain a fair and reasonable access to water to which the tribe has a legal and historical right.

However, the Washoe Tribe is strongly opposed to the California-Nevada Interstate Compact, contained in Section 201 of the bill. We have consistently opposed this Compact for many years. The Compact in its present form has been opposed by the Department of Interior, acting in its capacity as trustee for the Indian tribes, since at least 1969. We do not believe that the concerns of the Department, as they affect the Washoe Tribe, have changed.

After providing specific comments on our concerns with the Compact, we wish to offer recommendations for resolving those concerns. We hope that these recommendations will be carefully considered by this Committee.

II. SPECIFIC CONCERNS WITH THE COMPACT

Our concern with the provisions discussed below is that intent with respect to jurisdiction on Indian lands is unclear. We believe that the intent of Congress with respect to jurisdiction over Indian lands should clearly indicate that such jurisdiction is reserved by the federal government.

Article IV

We object to the creation of the California-Nevada Compact Commission. The Commission will represent the interests of the two states, but will be empowered to make decisions that may impact on the water rights of the five tribes in the three river basins.

According to officials of the State of Nevada, the interests of the tribes will be represented on the Commission by the Nevada State Engineer (page 28). This arrangement will result in neither objective representation nor effective advocacy for the rights and interests of the Washoe Tribe.

The federal representative will be a powerless, nonvoting, ex-officio member of the Commission (page 27). Even if objections to negative impacts on Indian tribes' water rights were raised by the federal representative, that representative would be powerless to influence the decisions of the Commission.

The Washoe Tribe does not wish to be represented on the Commission. It is in the best interests of the tribal government to remain separate and apart from an instrument of the two state governments.

Paragraph 6 of Article IV.D. provides the Commission with the power to require water users to install and maintain water measuring devices (page 33). The intent of Congress should be clarified to indicate that this provision does not apply on Indian lands.

Article IV.D. paragraph 9 permits the Commission the right of access to all properties in the four river basins (page 34). We believe that Congress should clarify that this provision does not apply to Indian lands.

Article IV.D. paragraph 11 provides the Commission with subpeona powers that are greater than that of federal district courts (page 34). We realize that the intent of the drafters of the Compact was to enable the Commission to subpeona federal officials in Washington, DC. Congress should clarify this provision to ensure that the Commission does not attempt to serve subpoenas on Indian lands, or against tribal elected officials, employees, members or representatives.

The specific problems discussed above are exacerbated by the vague and broad powers provided by the Compact to the Commission in paragraph 4 (page 33) and paragraph 10 (page 34) of Article IV.

We are especially concerned about the "emergency" powers provided in Article IV.E. (page 35). The term "emergency" is not defined, and the specific actions of the Commission seem to have no procedures for accountability to the public. Congress should clarify its intent that the existence of an emergency does not provide the Commission with the power to alter the allocations of water provided to the Washoe Tribe under the Alpine Decree, or to change the terms of the Decree.

Article X

Article X provides for Interbasin Transfers of Use (page 61). The exchange of water, provided for in line 9 should be clarified to specify that all exchanges of Carson River water should be consistent with the Alpine Decree.

Article XVIII

The Washoe Tribe should be exempted from the definition of "persons" on line 2 of page 66. The Washoe Tribe should not be subject to the jurisdiction of the Commission, which is an instrument of the state governments.

Article XX

We are particularly concerned about the "Recourse to Courts" article (page 67). If the occasion arises that the Washoe Tribe needs to seek judicial relief in federal courts, the Tribe should not be required to first submit its concerns to the Commission for review. Congress should clarify this article to specify that the water rights of the Washoe Tribe do not come under the jurisdiction of the Commission, but remain under the jurisdiction of the federal district court according to the provisions of the Alpine Decree.

Article XXI

Article XXI on page 68 contains the disclaimer that nothing in the Compact shall be construed as:

> A. Affecting the obligations of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

That disclaimer is directly contradicted by paragraph 3 of Article XXII on page 69, which makes specific provisions of the Cmpact binding on the federal government.

Article XXII

Congress should clarify the meaning of the term "wards" on line 7 of page 69. The definition of "wards" should not include Indian tribes, Indian people or individual Indians.

Article VII

Article XXII makes all of Article VII, "Carson River Basin," binding on the federal government (pages 42-47). The Washoe Tribe believes that its allocations of water are clearly established in the Alpine Decree. We oppose any efforts or intentions to change those allocations without our consent.

The limitations on rate of water use contained in Article VII.B. on page 45 should not apply to the Washoe Tribe. The language in that paragraph envisions ditch irrigation. The Washoe Tribe uses a pumping system. The Alpine Decree recognizes individual pumps.

The words "under applicable state law" on line 8 of page 46 should instead read "under the applicable court decree."

Article VII.D. envisions "Additional yields" of Carson River water (page 46). The Alpine Decree, on page 1, under Findings of Fact, states that the waters of the Carson River and its tributaries are fully appropriated. The intent of Congress should be clarified to define "additional yields," and to resolve differences between the Compact and applicable court decrees.

III. CONCERNS WITH TITLE I

The Washoe Tribe supports the initiative taken by the Pyramid Lake Tribe to resolve very difficult water concerns with other water users in the Truckee River Basin. However, we do have several concerns with Title I as they affect the Washoe Tribe (page 21).

Section 110

The Damages provided for in Section 110 of the bill should be appropriated separately by Congress for this purpose. The sums of $7 million per year should not be taken out of Bureau of Indian Affairs funds appropriated for other purposes.

Section 111

Section 111 of cancels all repayment obligations of the Truckee-Carson Irrigation District (TCID) owed to the United States government. According to the Carson City District Office of the Bureau of Reclamation, the irrigation district owes the taxpayers at least $1,493,000 and perhaps more. The exact figure should be specified in the bill.

Perhaps in this time of fiscal austerity, Congress should seriously consider whether the federal government can afford to forego this revenue. The savings to the TCID from having the pending lawsuits dropped should enable it to fully repay this obligation.

IV. ENVIRONMENTAL CONCERNS

The Compact was enacted by the legislatures of California and Nevada prior to the enactment by the federal government of major environmental policies. We are concerned that the Compact does not address federal policies regarding water quality or endangered species.

V. WASHOE TRIBE RECOMMENDATIONS

The Washoe Tribe does not wish to obstruct the important and historical resolution of serious water issues on the Truckee River. While we were aware that negotiation between the Pyramid Lake Paiute Tribe and other parties would probably result in proposed legislation, we were surprised to see the Compact attached to the bill.

While the Washoe Tribe believes that the Compact should be removed from the bill, we do not want to jeoparize the agreements arrived at after extensive and difficult negotiations. Instead, we wish to offer constructive recommendations that will mitigate the most potentially harmful impacts of the Compact on the water rights and interests of the Washoe Tribe.

Clarification of Congressional Intent

We recommend that a Section 204 be added to Title II of the bill to read:

> Notwithstanding any other provision of this Title, the federal government hereby reserves jurisdiction for, and on behalf of, the Washoe Tribe of Nevada and California with respect to all water rights, all water claims, and all allocations of water as decreed in *United States v. Alpine Land & Reservoir Co.*, Civ. No. D-183 BRT (D. Nev.), as trustee for the Washoe Tribe of Nevada and California.

This will protect the rights of the Washoe Tribe without requiring a change in the content of the Compact itself, which is contained wholly within Section 201. This amendment will also protect the status of the federal government as trustee for the lands and natural resources of the Washoe Tribe.

Committee Report Language

We further recommend that language be included in the Reports of the Senate Committee on Indian Affairs and the House of Representatives Committee on Interior Affairs to clarify the intent of Congress that Articles IV, XVIII and XX do not empower the Commission to exercise jurisdiction on Indian lands. Language should be included to clarify that the Alpine Decree establishes the allocations of water for the Washoe Tribe, and that no action of the Commission shall in any way change those allocations or affect the Washoe Tribe's use of those allocated waters, without the express consent of the tribal governing body.

A. Brian Wallace, Vice-Chairman
WASHOE TRIBE OF NEVADA AND CALIFORNIA
919 Highway 395 South
Gardnerville, NV 89410

702-265-4191

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 14 1969

Dear Mr. Zwick:

This responds to your request for the views of this Department on the draft California-Nevada Interstate Compact concerning waters of Lake Tahoe, Truckee River, Carson River and Walker River Basins.

We recommend that the Federal Government oppose the draft compact as it stands for the reasons stated below, including most particularly its adverse effect on Pyramid Lake. We believe, however, that a revised compact, acceptable to the United States, California and Nevada, can be negotiated and we recommend that the Federal Government now propose such negotiations.

As noted in a letter of August 1, 1968, to Mr. R. Riter, Federal Representative on the Compact Commission, from the Chairman of the California Commission and the Chairman of the Nevada Commission, the United States owns or controls virtually all the storage and diversion facilities on the Truckee and Carson Rivers and at Lake Tahoe. The rights of the United States on the Truckee River include the right to store water in Lake Tahoe between certain levels (described in the discussion of article V below) and the right to irrigation water for the Newlands project. On the Carson River the rights of the United States effectively preempt the flow of the river as of 1902. The United States supports the Winters' doctrine claim of the Pyramid Lake Tribe to Truckee River waters.

The compact goes beyond the usual function of allocating water between party states and purports to bind the Federal Government both as a sovereign and as trustee for Indians. Specifically, paragraph (3) of article XXII provides, among other things, that the compact shall become effective only when Congress has agreed that certain provisions of the compact "shall be binding on the agencies, wards, and instrumentalities of the United States of America." Most seriously affected would be the Winters' doctrine rights of the Pyramid Lake Indians. Because of these rights, we believe the United States should not consent to the draft compact as it stands, but should use the opportunity to renegotiate the compact so as to place the Indians in the best position to succeed in the proposed Winters' doctrine litigation.

Our position with regard to the Indian water rights is predicated upon the principles enunciated in *Winters v. United States*, 207 U.S. 564 (1908), and in *Arizona v. California*, 373 U.S. 546 (1963). We consider that all waters from Lake Tahoe and the Truckee River system other than waters (1) appropriated by the United States for such other purposes as the Newlands project or (2) adjudicated to third parties in litigation to which the United States was a party, as in *United States v. Orr Water Ditch Co., et al*, Nev. Equity No. A-3, D.C. Nev., September 8, 1944, are reserved for present and future development of the Pyramid Lake Indian Reservation.

From the viewpoint of regional and national interest, the recreational development now underway in the Lake Tahoe area should be continued as the draft compact contemplates, to the extent this can be accomplished without imperiling Pyramid Lake. The maximum 50,000 acre-feet set aside by the draft compact for diversion upstream of the California state line for California use in the Upper Truckee River and for Lake Tahoe uses in both states should not prove a substantial loss to Pyramid Lake. About a third of the 50,000 acre-feet represents already existing uses which would almost certainly be recognized in any *Winters'* doctrine suit. Some substantial part of the diversions will be returned to the river, presumably after treatment in accordance with applicable water quality standards. Even the complete loss of 50,000 acre-feet would leave an average annual flow into Nevada of 450,000 acre-feet and would also leave available for Pyramid Lake the periodic great flows. There is also an advantage to Pyramid Lake in the setting of a ceiling on the Lake Tahoe and Upper Truckee uses.

Preliminary findings of studies regarding Pyramid Lake which we are conducting are as follows. First, Pyramid Lake is a recreation resource of national significance because of its large area and the recreation, sport fishing, aesthetic, geologic, ecologic, archeologic and historic values it provides. Second, the lake offers greater potential high quality water recreation for large numbers of users than any other lake in Northern Nevada or California, particularly in light of the unique opportunity for optimum recreation development afforded by the Pyramid Lake Indian Tribe's single ownership of the lake and most of its environs. Third, we believe that the recreation potential of the lake is imperiled gravely by the current decline in level due to upstream diversions and uses and prospectively by further decreased inflow if new upstream facilities on the Truckee River should be developed to hold back and divert for other purposes the heavy spring runoffs which the lake now receives. Therefore, we propose negotiation of a revised compact which, together with a resolution of the other difficulties discussed herein, contains a recognition of the right of the United States to proceed with the Winters' doctrine litigation and the corresponding duty of all parties to be bound by the results of that litigation.

We hope to conclude in the near future studies which will show more clearly the relationship of Lake Tahoe and Upper Truckee River uses to maintenance of the level of Pyramid Lake. Even if the studies compel a modification of our position, we believe that negotiation of an acceptable compromise may be possible.

A brief description of the substantive provisions of the compact and their effect upon United States and Indian rights follows. A majority of the indicated problems could be resolved through negotiation.

Article I expresses the compact purpose to apportion between California and Nevada the water of the three rivers and Lake Tahoe.

Article II defines the terms used in the compact. The definition of the "Walker River Basin" should be modified to indicate that Walker Lake is in the Walker River Basin.

Article III contains general language with regard to "Sovereign Relationships."

Article IV establishes the composition, financing, procedure, and general powers of the Commission.

Article IV provides for one United States representative who shall be ex-officio chairman of the Commission without vote and who shall not be a domiciliary of or reside in either state. By reason of the substantial Federal interest in the area and the fact that the United States would be bound by the key provisions of the compact, the Federal representative should be a voting member of the Commission. In addition, the prohibition on domicile and residence appears to imply a belief on the part of the negotiators that a United States representative residing in Nevada or California would be biased in favor of the state of his residence. We cannot accept this implication. Further, the rather detailed formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Indian Tribe for Truckee River water, but does not provide for tribal representation. Therefore, the terms of the United States representation should be revised and full Indian representation assured.

Article V deals with the allocation of water within the Lake Tahoe Basin. It confirms United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet (Lake Tahoe datum). However, storage rights of the United States in Lake Tahoe run to an elevation of 6230 feet in the decree entered in the case of United States v. Truckee Carson General Electric Company, in the District Court of the United States, Northern District of California, Second Division, on June 4, 1915. The figure 6229.1 feet is not descriptive of the storage rights of the United States, but of the agreement of the United States in the Truckee River Agreement of June 13, 1935, that the Truckee-Carson Irrigation District will operate the outlet works in such a manner as to prevent, as far as possible, high water damage. Operating criteria, intended to prevent, insofar as possible, the lake elevation exceeding 6229.1 feet were agreed upon, but the latter figure is not the upper limit of the United States storage right. The storage rights of the United States are not affected by the 1935 contract. Therefore, the upper elevation of United States storage stated in the compact should be 6230 feet.

The major provision of article V permits total annual gross diversions of 34,000 acre-feet annually for use within the Lake Tahoe Basin, of which 23,000 acre-feet are allocated to California and 11,000 acre-feet are allocated to the State of Nevada. The allocation of 34,000 acre-feet is premised upon the construction of an overflow weir with a crest elevation of 6223 feet. The construction of such a weir would allow additional water to be developed from Lake Tahoe by enlarging the overflow cross-section of a present natural physical barrier above the outflow works which restricts the rate of flow between elevations 6225 and the low-water mark of 6223 feet. The lowering of the lake under the circumstances established in the compact would be allowable under the 1915 decree in which the United States acquired its storage rights in Lake Tahoe. In addition, recognizing that the construction of the weir may be some time later than the effective date of the compact, the states may use the same amount of water, 34,000 acre-feet, in the interim before the weir is actually built. Part of the 34,000 acre-feet is already being used within the basin.

Article VI of the compact allocates water of the Truckee River in the following order of relative priority as between the states. First, to Nevada the amounts provided for in the decree of United States v. Orr Ditch Company for irrigation on the Pyramid Lake Indian Reservation. Second, California is given the right to divert 10,000 acre-feet per year which may be stored when the flow in the channel of the Truckee River exceeds the so-called Floristan rate of 500 cubic feet per second. Current use under present rights is estimated at 8500 acre-feet. Under the 1915 decree some of the water in the Truckee River in excess of the Floristan rate of 500 c.f.s. is "reserved" water of the United States.

California would also receive 6000 acre-feet annually from the conservation yield of Stampede Reservoir. This would appear to recognize the allocation of water to California under the Washoe Project Act. After the water allocated to California has been developed, California also may develop additional yields of water in California subject to then existing beneficial uses in Nevada. The beneficial use so recognized in the compact for this purpose for the Pyramid Lake Indian Reservation would be the amount of water stated in the *Orr Ditch* decree for agricultural use plus such additional domestic or municipal water as may have been then developed. In order to obtain this water Pyramid Lake development would have to precede the future development in California.

This provision is unacceptable. We would want express recognition in the compact of the right of the tribe to litigate its *Winters'* doctrine claim for Truckee River water.

Article VII allocates the waters of the Carson River in the following order of priority between the states. First, to California, a right to divert water from the West Fork to irrigate an additional 5600 acres. California is also given the right to store 2000 acre-feet per year within Alpine County for supplemental use on presently irrigable land, such storage to be adverse to Lahonton Reservoir but subject to other existing uses within Nevada. Nevada is allocated a right to divert water to irrigate approximately 41,320 acres with a rate of diversion essentially predicated upon alleged existing uses. Each state may also store upstream of Lahontan in existing reservoirs to the extent of their existing capacity and priority. Finally, the Newlands project water rights are recognized, but as inferior to those previously mentioned.

Since 1925, in the case of *United States v. Alpine Land Company*, the United States has been attempting to establish on a firm judicial basis its storage and diversion right for Lahontan Reservoir in relation to pre-1902 upstream diversion rights. Under proposed findings in that case, the United States essentially would recognize the priority attached to 41,800 acres. The compact would increase the upstream acreage with rights ahead of the United States to 50,740 acres. The increase is not acceptable because it may make necessary greater diversions from the Truckee River for the Newlands project and so adversely affect Pyramid Lake. It is also better that negotiation to settle water rights in the Carson Basin be done within the framework of the Alpine Land Company case rather than in the proposed compact. Accordingly, the compact should be revised to accept the decision of the court in the Alpine Land Company case.

Article VIII allocates the water of the Walker River Basin recognizing, first, the rights established in decree C-125 in the case of the United States v. Walker River Irrigation District, 104 F. 2d 334 (1939). In that case, the Indian rights on the Walker River Indian Reservation were established at a continuous flow of 26.25 cubic feet of water per second during an irrigation season of 180 days for 2100 acres. It appears, however, from the report of the case, that irrigable lands within the Indian reservation amount to approximately 10,000 acres. The court in that case apparently was of the view that the acreage used to measure the reserved water right was the acreage historically shown to have been devoted to irrigated agriculture. The test applied was clearly more narrow than that used in Arizona v. California, 373 U.S. 546 (1963), where the court recognized the Indian right to water for all irrigable acreage within the reservation whether irrigated presently or not. Thus, under the Walker River decree, the Indian reservation has been allocated approximately one-fifth the amount of water to which it would have been entitled if the more generous test of Arizona v. California had been applied. We are, therefore, considering the possibility of reopening the Walker River case. Article VIII should be amended to recognize the right of the Indians to reopen the case, with all parties to be bound by the results.

Articles IX through XX deal with such other subjects as development of ground water and springs, interbasin transfers, suppression of evaporation, nonconsumptive uses and enforcement.

Article XIII states that the use of water for fish, wildlife and recreation is recognized as an inseparable part of the public interest and is beneficial. This is a step forward. However, it does not appear that the compact alone would ratify presently existing fish, wildlife and recreational uses of water which may have heretofore existed without benefit of state recognition. Only the groundwork, i.e., recognition as beneficial, is laid in the compact for further state procedures leading to a water right.

Article XXI purports to protect the rights of the United States. Paragraphs A through D, article XXI, if taken alone, probably would give total protection to all present and future rights of the United States in the four basins which are the subject matter of the compact. However, article XXII, Ratification and Consent, an exception for which is contained in article XXI, would require the United States, by Act of Congress, to agree that the 14 critical paragraphs of the compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian rights in water for Pyramid Lake, those allocating water to upstream users in the Carson River, and those limiting the Indian rights on the Walker River Indian Reservation. Moreover, through cross-references to other sections in the compact, the United States would be bound to still other provisions.

Even if the United States agrees to be bound to the specific water allocation provisions of a renegotiated compact, the exceptions to the article protecting the rights and powers of the United States should not be so broad as to impair other valid rights and powers. For example, although the compact does not address itself to water quality per se, allocations and diversions under the compact could have serious effect upon water quality. Thorough consideration should be given to the quality levels of the water allocated by the compact. For example, if Pyramid Lake is to be of significant value as a national recreation resource, special effort will be required to protect the quality of water flowing into it. We are concerned, therefore, that the exception from impairment of rights and powers of the United States under article XXI might affect existing authority to set and enforce water quality standards under the Federal Water Pollution Control Act, as amended.

We realize that the compact as presently drafted represents an attempt to resolve definitively most of the outstanding questions of interstate water allocation and use in Lake Tahoe and the three river basins. A less ambitious but worthwhile and attainable goal would be a revised compact which constitutes a framework for recognition of existing uses but is flexible enough to accommodate future resolution of remaining conflicting claims. We propose that the Federal Government oppose the compact as it stands, but that it enter into negotiations with the two state commissions as soon as possible to arrive at a compact which is substantially in accordance with the views of this Department and the other Federal agencies with a program interest in the area subject to the compact.

We suggest that the work of negotiation be made the responsibility of a special task force on which this Department, as well as the Department of Justice, should be represented. We would like to be consulted on the naming of the negotiators. We also would like an opportunity to participate in the drafting of instructions to the negotiators.

Sincerely yours,

(sgd) Stewart L. Udall

Secretary of the Interior

Hon. Charles J. Zwick
Director, Bureau of the Budget
Washington, D. C.

SEP 4 3 45 PM '85

August 29, 1985
Acting
Phoenix Area Director

Comments on S. 1558, a Bill "To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada and for other purposes."

Congressional and Legislative Affairs Staff, mc120

On August 1, 1985, S. 1558, a bill "To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada and for other purposes" was introduced in the Senate. Concurrently, companion bill H.R. 3213, was introduced in the House of Representatives. You have asked our comments on S. 1558 and how it affects Nevada Indian Tribes. Our comments follow:

The Pyramid Lake Paiute Tribe negotiated Title I of this bill without Bureau of Indian Affairs involvement. It is recognized that a large measure of self-determination is current federal Indian policy. We do not wish to sound critical, however, we feel that there are many items in the bill that are detrimental to Pyramid Lake. We are aware that any negotiated settlement should be looked at as a total package and not with focus on specific parts. With that in mind we have few comments to make on Title I. We would point out that settlement proposals of Title I are inconsistent with some language of Title II. When the two titles are combined, as S. 1558 has done, we believe that the bill negatively impacts the western Nevada Indian community and the Secretary of Interior.

The bill purports to protect and provide such measures that the Lahontan cutthroat trout and cui-ui will eventually be delisted from the threatened and endangered species listing. Careful reading of the bill results in our conclusion that the survival of the two species is not assured by this legislation. Additionally, instream flows critical for spawning and nursery habitat, are not addressed. Eutrophication of Pyramid Lake is a current concern because of Reno-Sparks sewage control problems and yet water quality is not addressed in the bill. While large amounts of money are itemized in the bill to be appropriated and placed in specific treasury accounts for use by the Pyramid Lake Paiute Tribe, there are insidious references to the Secretary of Interior being liable for several millions of dollars per year in damages if certain listed items are not accomplished. Those damage dollars we presume would come from BIA annual appropriations.

Title I

Page 5, Line 10. "By Period" is a typographical error; it should read "Dry Period"

Page 7, Line 9-12. Wording can be interpreted more than one way. Possible satisfactory language is: "In any two year period the level of the Pyramid Lake water surface shall not drop below elevation 3,786 feet above mean sea level measured at the end of each water year beginning September 30, 1989 and calculated by a two point moving arithmetic mean."

Page 9, Line 9 and Page 10, Line 5. "Dry period municipal and industrial supply" we assume to be a Bureau of Reclamation term of art. It should be defined or at least attributed to Reclamation.

Page 10, Line 18-24. By this language the Secretary of Interior alone shall determine when water is not required for the Pyramid Lake fish resources. There is no objective criteria stated or inferred to define when the fish resource requires water.

Page 19, Line 4. As drafted the Secretary of Interior shall pay damages of up to $16,000,000 out of appropriated funds if certain conditions are not met. We assume this money would come from BIA appropriations.

Page 21, Line 2-8. The Secretary of Interior shall pay damages of up to $7,000,000 per year if the water level of Pyramid Lake drops below certain elevations for specified periods of time. We assume such damage dollars would come from BIA appropriations.

Page 21, Line 21 through Page 22, Line 6. (1) With all repayment obligations removed from the Newlands Project as this section provides and the congressional charter granted to TCID to run the Project provided in Sec. 111(b)(1), we have concerns that the Secretary will not have authority to promulgate or enforce operating criteria. It has been operating criteria that the Secretary has enforced since 1967 that is in large measure responsible for the water surface rise at Pyramid Lake. (2) In this time of austere federal budgets the cost to the federal treasury of forgiving the Newlands Project repayment obligation should be listed.

Page 22, Line 7-11. The Truckee-Carson Irrigation District by this provision is granted authority to manage the Newlands Project facilities. The Secretary of Interior has had to take the operation of government facilities away from TCID in the past because of operational irregularities and yet this provision provides a congressional charter to the same organization. The Fallon Indian Reservation is part of the Newlands Project but not part of the Truckee-Carson Irrigation District. Language should be modified to acknowledge the Fallon Indian Reservation and provide a mechanism to guarantee water delivery to reservation lands.

Page 23, Line 11. The Endangered Species Act should be cited as 16 USC 1531; not 165 USC 1531.

Title II

We have grave concerns about the effect of the California-Nevada Interstate Compact. These concerns have been voiced ever since the mid 1960's. Our November 1984 memorandum to the Regional Solicitor is an example of specific concerns and is attached. These concerns fall in four areas:

(1) General. Water quality is not addressed and yet there are water quality problems in all four basins.

The Endangered Species Act is ignored.

The compact is not in harmony with the Orr Ditch and Alpine court decrees.

(2) Secretary of Interior. Federal sovereignty is compromised. In addition, the compact gives up a large measure of federal reservoir control and yet Title I of this bill burdens the Secretary with payment of damages if certain water surface elevations of Pyramid Lake are not maintained. Control of these reservoirs could have insured compliance.

(3) Pyramid Lake Reservation. Several compact provisions directly and negatively impact on the Pyramid Lake Reservation. We assume that the Pyramid Lake Tribe has considered these provisions in their negotiations of Title I.

(4) Walker River Reservation. The compact hurts Walker River Reservation and yet the Walker River Tribe has had no input nor does it derive any benefit from any Title of the bill as drafted.

We appreciate the opportunity to comment on a bill that directly impacts Tribes for which we have responsibilities.

/s/ Curtis Geiogamah

Attachment

cc: Office of Trust Responsibilities, Attn: John Rushman
FWS, Great Basin Complex Office, Reno
Superintendent, Western Nevada Agency
Chairman, Washoe Tribe
Chairman, Pyramid Lake Tribe
Chairman, Walker River Tribe
Chairman, Fallon Business Council
Michael Thorpe
Bob Pelcyger
Scott McElroy
Associate Solicitor Indian Affairs
Dave Galat
BLO

UNITED STATES GOVERNMENT
memorandum

DATE: November 7, 1984

REPLY TO ATTN OF: Phoenix Area Director

SUBJECT: California-Nevada Interstate Compact, our Meeting of June 14, 1984

TO: Regional Solicitor

COPY

At our Phoenix meeting on Thursday, June 14, 1984, you indicated that the files you inherited regarding the California-Nevada Interstate Compact were travel worn and incomplete. You requested that this office provide a listing of concerns relative to the proposed compact.

For approximately twenty years, representatives from the states of California and Nevada negotiated the language of an interstate water compact with token United States representation and no Indian input. After the draft compact passed the Nevada Assembly and Senate and was introduced in the California legislature, many federal agencies -- the Solicitor's Office and Bureau of Indian Affairs included -- devoted considerable time and expense in developing a federal position on the proposed compact. The official federal (including the Department of Interior) position taken as the result of that effort was one of rejection; that the compact was unacceptable in its present form. Neither the overall federal position nor that of the Department of Interior has ever been rescinded -- over a fifteen year period with four changes in administration and seven different men serving as Secretary of Interior.

The constancy of that position is extremely important since many major events have occurred in the intervening years that impact on Lake Tahoe and the Truckee, Carson and Walker River basins. For example:

*Endangered Species Act enacted by Congress 12/28/73, P.L. 93-205.
*Supreme Court decision in Nevada v. United States.
*Final Decree in United States v. Alpine Land and Reservoir Company.
*Ninth Circuit Court of Appeals decision in Carson-Truckee Water Conservancy District v. Secretary of Interior.
*Unprecedented population growth in the Lake Tahoe and Reno-Sparks areas.

Through the years this office has consistently raised concerns about the compact in its present form and how it would adversely affect Indian people. Events that have transpired in the recent past such as those enumerated above have not allayed our concerns; in fact, we are now more concerned than ever.

Some of the major problems we have with the presently drafted compact are:

o The compact allocates water amounts in both California and Nevada that are not consistent with the final decree in United States v. Alpine Land and Reservoir Company.
o The compact is extremely detrimental to Pyramid Lake.
o Area fishery problems are not addressed in the compact.

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

GPO : 1984 O - 446-111

- o There is no consideration given in the compact to water quality and yet water quality problems exist in each of the three river basins.
- o The compact ignores the paramount United States interests in the region.
- o The compact does not take into account the Congressional charge regarding treatment of endangered species.

We are aware of the recent negotiation position of the State of Nevada that compact approval in its present form is a necessary prerequisite to a negotiated settlement of the Pyramid Lake issues. In light of the concerns we have enumerated above and those we have attached, we see no way that United States officials can acquiesce to such a demand and still fulfill congressionally mandated federal functions.

Copy

JAMES H. STEVENS

Attachment

BIA COMMENTS
California-Nevada Compact
November 1984

1. We concur with the statement made by Secretary of Interior Stewart L. Udall in a January 14, 1969 letter to Charles J. Zwick, Director, Bureau of the Budget: "The compact goes beyond the usual function of allocating water between party states and purports to bind the federal government both as a sovereign and as trustee for Indians." And yet there was only token United States representation in the compact negotiation process (a neutral U.S. representative) and no Indian involvement. At the end of the compact negotiations a provision was added to the compact to bind the United States. Our position, because of the Indian people we represent, is that substantial changes in the compact must be made before it is accepted.

2. ART.II.E. The Carson sink area should be included within the definition of the Carson River basin. If the sink is not defined as part of the basin then the downstream limit of the Carson River basin should be precisely defined.

3. ART.II.F. The Walker River basin should include the whole Walker Lake and not just the portion on the Walker River Indian Reservation.

4. ART.II. Definition should be provided for "beneficial use".

5. ART.IV. The prohibition on domicle and residence for the federal representation appears to imply a belief on the part of the negotiators that a United States representative residing in Nevada or California would

be biased in favor of the state of his residence. We cannot accept this implication. Further, the rather detailed formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Indian Tribe for Truckee River water, but does not provide for tribal representation. Therefore, the terms of the United States representation should be revised and full Indian representation assured. Additionaly, by reason of the substantial federal interest in the region and the fact that the United States would be bound by key provisions of the compact, the federal representative should be a voting member of the Commission.

6. ART. IV.D.6. We do not believe that the Compact Commission should have unilateral power to dictate measuring devices over all lands within the appropriate water basins. Acceptable language would be the inclusion of a sentence following the phrase..."as the Commission may determine necessary or proper to carry out the purposes and provisions of the compact. Such determination may be made only after appropriate hearings or consultation with the water users and with respect to waters on Federal lands, shall take into consideration the program and plans of the Agency administering such lands.

7. ART.IV.D.11. As written, the Compact Commission has broader subpoena power than U.S. District Court judges. We find that objectionable.

8. ART.IV.E. As written, the Compact Commission could conceivably reallocate water irregardless of judicial decree. This is unacceptable.

9. ART.V. It confirms United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet (Lake Tahoe datum). However, storage rights of the United States in Lake Tahoe run to an elevation of 6230 feet in the decree entered in the case of United States v. Truckee Carson General Electric Company, in the District Court of the United States, Northern District of California, Second Division, on June 4, 1915. The figure 6229.1 feet is not descriptive of the storage rights of the United States, but of the agreement of the United States in the Truckee River Agreement of June 13, 1935, that the Truckee-Carson Irrigation District will operate the outlet works in such a manner as to prevent, as far as possible, high water damage. Operating criteria, intended to prevent, insofar as possible, the lake elevation exceeding 6229.1 feet were agreed upon, but the latter figure is not the upper limit of the United States storage right. The storage rights of the United States are not affected by the 1935 contract. Therefore, the upper elevation of United States storage stated in the compact should be 6230 feet.

10. ART.V.E. The pumping from Lake Tahoe provision works against Pyramid Lake and judicious use of Stampede reservoir.

11. ART.V.F. This section gives the Compact Commission extremely broad powers that seem to supersede the "Orr Ditch" and "1915" decrees.

12. ART.VI. The Pyramid Lake Paiute Tribe is precluded by Nevada v. United States from asserting claims against appropriated water right holders. The tribe needs the unappropriated Truckee River water in California and Nevada. Presently the compact does not allow the tribe to do this.

13. ART.VI. At best the compact does not address the issue of reservoir operation.

14. ART.VI.1,3 & 4. Water is allocated for undefined purposes in California. Judge Ramirez has ruled from the bench in Pyramid Lake Paiute Tribe v. State of California that Tribe's claim to unappropriated water is unaffected by Nevada v. United States.

15. ART.VI.B.3. Six thousand acre feet of water are granted to California from Stampede reservoir. The allocation ignores the Ninth Circuit Court Decision in Carson - Truckee Water Conservancy District v. Secretary of Interior and the Endangered Species Act, 16 U.S.C. §1531.

16. ART.VI.B.4. Neither fishery flows nor lake stabilization are listed as beneficial uses of water.

17 ART.VI. Floriston rates are not mentioned in the compact and yet that is the logical place to address and correct their inconsistences and inefficiencies. Presently California is not bound by them and they are outdated. Floriston rate regime has a bearing on Pyramid Lake stabilization and spring spawning flows.

18. ART.VII. This article does not entirely agree with the final Alpine decree in regard to acreage, water rotation and irrigation season. Appropriate language perhaps could be inserted as follows: "The Compact

Commission shall recognize the pertinent provisions of the final Alpine decree as they pertain to allocations of water between California and Nevada."

19. ART.VIII. Water quality problems are not addressed and are of vital interests to the Walker River Tribe.

20. ART.VIII. The term "unused water" is used throughout the article. The term should be "unappropriated water".

21. ART.VIII.A.4(a). Weber Reservoir on the Walker River Indian Reservation was constructed fifty years ago. A right to store water in the structure has not been acceded to by the Nevada State Engineer. As now written this article would allow Hoye Canyon and Pickle Meadows reservoirs, proposed structures that have a Nevada water right priority in the 1930's to be constructed in the future and operated to the detriment of the Walker River Tribe.

22. ART.X. Interbasin transfers of water should further be limited by language of existing court decrees.

23. ART.XII. The Federal government owns and controls most of the storage and diversion facilities in the compact area. The Compact Commission should not control the operation of Federal reservoirs.

24. ART.XXI. This article purports to protect the right of the United States. Paragraph A through D, Article XXI, if taken alone, probably would give total protection to all present and future rights of the United States in

the four basins which are the subject matter of the compact. However, Article XXII, Ratification and Consent, an exception for which is contained in Article XXI, would require the United States, by Act of Congress, to agree that the 14 critical paragraphs of the compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian rights in water for Pyramid Lake, those allocating water to upstream users in the Carson River, and those limiting the Indian rights on the Walker River Indian Reservation. Moreover, through cross-reference to other sections in the compact, the United States would be bound to still other provisions. Even if the United States agrees to be bound to the specific water allocation provisions of a renegotiated compact, the exceptions to the article protecting the rights and powers of the United States should not be so broad as to impair other valid rights and powers. For example, although the compact does not address itself to water quality per se, allocations and diversions under the compact could have serious effect upon water quality.

25. ART.XXI. Somewhere in the compact should be these additional paragraphs:
... except as provided in Article XXII nothing in this compact shall be construed as:

*Impairing or affecting the constitutional authority of the United States or any of its powers, rights, functions, or jurisdiction under existing or future legislation in and over the area of waters which are the subject of this compact.

*Affecting the rights or powers of the United States of America, its Agencies, instrumentalities, or wards to administer and control lands of the United States or lands administered by it, or giving to the Commissioner to any person, organization, or governmental entity and rights or powers to use, occupy, administer, alter or control lands owned or administered by the United States, except with the consent of the Agency or instrumentalilty administering or having control of said land.

*Relinguishing the functions, powers, or duties of the Congress of the United States with respect to the control of any navigable waters within the basin, or shall any provision hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the states and with foreign nations.

*A waiver by the United States of its immunity from suit.

26. Somewhere in the compact should be an article that says in substance: "The United States is entitled to develop additional water yields independently or in cooperation with others. Any such water yields that result from participation by the United States may be used for its own purpose of in furtherance of the purpose of this compact without regard to any State allocations made by this compact."

27. Somewhere in the compact thorough consideration should be given to the quality of water allocated by the compact. The Walker River Indian Reservation presently suffers from high concentration of total dissolved solids in late summer; Lake Tahoe communities now export sewage into the Upper Carson River drainage; and Reno-Sparks sewage treatment problem are accelerating Pyramid Lake algal blooms.

28. With the threatened Lahontan cutthroat trout and the endangered Cui-ui found in the affected watersheds the compact cannot ignore the Endangered Species Act.

PROPERTY OF WASHOE TRIBE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ALPINE LAND & RESERVOIR COMPANY,
a corporation, et al.,
Defendants.

Civil No. D-183 BRT

FINAL DECREE

FINDINGS OF FACT, CONCLUSIONS OF LAW,
TABULATION AND ADMINISTRATIVE PROVISIONS

FINDINGS OF FACT

I. This Court has jurisdiction over the subject matter and the parties to this proceeding.

II. The Carson River and its tributaries are interstate streams and the waters of the Carson River and its tributaries are fully appropriated.

III. Under the Reclamation Act of June 17, 1902, the United States, acting by the Secretary of the Interior, on July 2, 1902, withdrew from public entry, excepting under the homestead laws in accordance with the provisions of the Act, the lands required for the government's first reclamation project, now known as the Newlands Project.

IV. The United States has diligently proceeded with the construction of the Newlands Project and has expended over Six Million Dollars ($6,000,000) in that construction. The works so constructed have been used for many years for the storage of Carson River water and the distribution thereof to Project lands. The principal structure of the Project is the Lahontan Reservoir which was completed at a cost of approximately One Million Four Hundred Thousand Dollars ($1,400,000). Lahontan Reservoir has a capacity of 295,149 acre-feet to the spillway crest. With 20 inch flashboards on the crest, the capacity is 317,280 acre-feet. The lands of the Newlands Project irrigated or susceptible of irrigation by the waters of the Carson River and its tributaries include 80,000 acres of cultivable lands, 50,000 acres of pasture lands, and 7,500 acres of land in the Truckee Division of the Project.

V. There existed prior to July 2, 1902 certain vested rights, owned by old-time settlers in Churchill County, in and to the use of waters of the Carson River and its tributaries. The United States, subsequent to July 2, 1902, acquired the right, title and interest of these owners in the waters, ditches, dams, and other irrigation facilities and structures and in return agreed to construct water storage and distribution facilities and to deliver certain waters to these owners.

VI. Prior to July 2, 1902, there existed under the ownership of Frank W. Inman and his wife the right to divert 40 c.f.s. of water of the Carson River with a priority of 1882 for the purpose of producing power. On February 12, 1912, Frank W. Inman and his wife executed an agreement conveying this power right to the United States.

VII. The United States possesses Trust Patents to five riparian rights on the West and East Forks of the Carson River in Alpine County, California, in favor of the following five beneficiary Indians of the Washoe Tribe, in the acreage as specified:

Name	Acreage
Dr. Bob	1.40
Hattie Miller (Cow Bitch)	19.73
Molly's Pete	16.40
Maggie James	4.40
GO-DAH-DIC-PETE	8.25

VIII. The lands on which the waters of the Carson River and its tributaries are used lie in an arid region of the United States; to make these lands productive, irrigation thereof is necessary; these lands vary widely in texture, porosity, terrain, inclination, vegetation, crop uses, subsurface stratas and other factors which affect the amount of water necessary to irrigate different portions of said lands and further affect the amount of water which is returned to the main course by drainage and other means; the various areas require, for proper irrigation and crop productivity varying quantities of water per acre. In the Newlands Project, the water duties are 3.5 acre-feet per acre delivered to the land for the bottom-land and 4.5 acre-feet per acre delivered to the land for the bench land. In the lands above the Newlands Project the water duties are 4.5 acre-feet per acre diverted to the canal for the bottom-lands, 6.0 acre-feet per acre diverted to the canal for the alluvial fan lands and 9.0 acre-feet per acre diverted to the canal for the bench lands. The water duties assigned for the various categories of the land are the total duties from whatever source of surface water.

The net consumptive use of surface water for irrigation on the Newlands Project is 2.99 acre-feet per acre. The net consumptive use of surface water for irrigation of the lands above the Lahontan Reservoir is 2.5 acre-feet per acre.

IX. The Carson River and its tributaries are divided into eight segments:

Segment 1: The East Fork of the Carson River from the California/Nevada state line up to the headwaters of the East Fork in the mountains.

Segment 2: The East Fork of the Carson River from the California/Nevada state line to the confluence of the East and West Forks of the Carson River.

Segment 3: The West Fork of the Carson River from the gauge at Woodfords, California upstream to the headwaters in the mountains.

Segment 4: The West Fork of the Carson River from the gauge at Woodfords to the California/Nevada State line.

Segment 5: The West Fork of the Carson River (and Brockliss Slough) between the California/Nevada state line and the confluence of the East and West Forks of the Carson River.

Segment 6: The main stream of the Carson River from the confluence of the East Fork, West Fork and Brockliss Slough to the gauge at Carson City.

Segment 7: The main stream of the Carson from the Carson City gauge to Lahontan reservoir. This segment is further subdivided for administration into autonomous subsegments:

(a) Mexican Ditch, Dayton and the reach between Rose Ditch and Cardelli Ditch, inclusive;
(b) Gee Ditch;
(c) Koch Ditch;
(d) Houghman and Howard Ditches;
(e) Buckland Ditch.

Segment 8: The area below the Lahontan Dam.

X. The historic practices, customs, agreements and decrees followed by the water users and the Federal Water Master on the Carson River and its tributaries:

1. General:

(a) The Watermaster shall begin to direct the distribution of water on such date that he determines there is not enough water in the Upper Carson River to serve the most junior priority.

(b) When such distribution begins, the water users are notified that the river is on regulation and diversions will be monitored.

(c) Subject to the exceptions described below, the water is distributed on the basis of priority and acreage.

(d) For purposes of distribution, the river is administered in segments in accordance with established practices, customs, agreements and decrees.

(e) When the river is on regulation each segment of the river is treated autonomously.

(f) The high alpine reservoirs on both forks of the river are filled out of the priority order. This is done because the snow does not melt sufficiently at those high elevations to fill the reservoirs until the summer when the river flow has already begun to diminish down in the valley.

(g) On all segments of the river, rotation is practiced so as to serve the junior priorities as long as possible.

(h) On both the East Fork and the West Fork, any user, regardless of his priority, who does not need the water does not get it. If the user has a need for it, he gets the water under his priority; if he does not have a need for it, the water goes to the next junior priority.

2. Segment 1:

Since this segment consists largely of riparian lands, there are no relevant customs and the Water Master exercises little supervision except to regulate the release of water from the Alpine Land and Reservoir reservoirs. Water in these reservoirs is represented by corporate stock and is rented, traded and sold to any landowner.

3. Segment 2:

(a) When the flow rate at the Gardnerville gauge reduces to 200 cubic feet per second, 1/3 of the river flow is directed into the Allerman Canal and 2/3 of the flow stays in the river. The point of measurement for the 1/3-2/3 split is at a weir located 100 feet downstream of the intersection of Highway 395 and the Allerman Canal. Water users on the Heybourne Tract served by the Allerman Canal, the upper New Virginia, Company and Cottonwood ditches hire a ditch rider to assist, under the direction of the Water Master, in the distribution of water.

(b) Reservoirs 1, 2 and 4 on the Dangberg lands are filled 3 times yearly. The reservoirs are filled once in February and March pursuant to their storage rights. The reservoirs are filled twice later in the year as a means of regulating the water flow in the Virginia and Allerman ditches and ensuring sufficient irrigation head during periods of peak irrigation demand.

(c) Most diversions in this and the other segments are based upon a two-week irrigation interval. The smaller canals such as the Peter Heitman, Berning, Christensen-Hussman, Madison or Topping No. 1 and Topping No. 2 divert for several days on a two-week interval. Other larger canals and sloughs divert on a continuous basis and individual ditches and laterals coming off these larger canals will be on the two-week rotation. Canals and sloughs that divert continuously are the Allerman Canal, Upper New Virginia, Rocky Slough, Henningsen System, Stodieck, St. Louis Straight, Homestream, Company, Cottonwood and Williams Slough.

The continuous diversion made by the St. Louis Straight and island portion of Homestream will be stopped and transferred to the Allerman Canal when the 1/3-2/3 split takes place.

(d) When the East Fork goes on regulation, the Cottonwood Slough is used to convey water downstream to the Williams Slough diversion rather than using the main channel of the East Fork.

4. Segment 3:

This segment on the West Fork consists largely of riparian lands and the Water Master exercises little supervision except to regulate the release of water from the mountain reservoirs for downstream use. Traditionally the water stored in the mountain reservoirs has not been considered appurtenant to any particular place of use.

5. Segment 4:

(a) The Anderson-Bassman Decree, Exhibit 16, provides that beginning the first Monday in June and continuing to the end of the irrigation season the available water supply is rotated on a weekly basis between Segment 4 and Segment 5. This custom applies to all water users on these two segments, not just the original parties to the Anderson-Bassman lawsuit or their successors in interest.

(b) The Price Decree, Exhibit 18, and the 1941 Agreement, Exhibit 19, control the rotation among the Segment 4 users during the week that Segment 4 has water under the Anderson-Bassman Decree.

(c) During the non-irrigation season, diversions are made by the Snowshoe Thompson No. 2 ditch via Indian Creek to store water in the Mud Lake Reservoir.

6. Segment 5:

(a) As mentioned above, this segment's diversions are made according to the weekly rotation schedule with Segment 4 after the first Monday in June.

(b) During Segment 5 week the water is allocated according to priorities. During Segment 4 week, any Segment 5 junior appropriators who did not get direct flows during Segment 5 week are allowed to use the return flows from Segment 4.

(c) The Dresslers usually bring their alpine stored waters down during Segment 5 week but Bruns and Gansberg usually bring their Lost Lake water down during Segment 4 week.

(d) The water stored in Mud Lake Reservoir is sometimes released to downstream users in exchange for direct diversion that would normally go to those downstream users.

(e) Brockliss Slough, starting in the vicinity of Dressler Lane, carries West Fork water drainage down to the confluence of Brockliss Slough and the East and West Forks. During times of short supply in Brockliss Slough, the use of water is rotated among the three oldest priorities; a second rotation is observed among the other priorities.

(f) Drainage water is occasionally diverted from the old West Fork into Brockliss Slough and then to lands west of Brockliss Slough.

(g) Due to the destruction of the Jones Company West ditch by flood, the lands formerly irrigated from that ditch are now served with return waters from Bull Slough. Bull Slough also receives return flows from irrigation using mountain creeks not considered tributaries of the Carson.

(h) Some rights which appear to be served with West Fork water are actually served with East Fork water which, after being used to irrigate East Fork lands, drains into the West Fork channel. These lands are generally those in between Squires Ditch and the Muller-Bartels dam on the West Fork.

(i) Water taken out of the East Fork through Rocky Slough and into Edna Ditch and other small ditches is used to irrigate lands between the East Fork and the West Fork.

7. Segment 6:

The diversions in this segment occur by pumping from the river. When the main stream is on regulation, the amount of water that gets to each pump is sufficient to satisfy that priority. As a result, and because of the high cost of regulation in comparison to benefits, the Water Master makes no attempt to regulate in this segment unless a controversy arises.

8. Segment 7:

Due to the intermittent nature of the river's surface flow, appearing upstream and disappearing downstream from various diversion structures, this segment is regulated in autonomous sub-segments.

9. Segment 8:

There are no relevant practices or customs in this segment and the Water Master only regulates when a controversy arises.

XI. The California riparian landowners are entitled to the riparian water rights permitted under California law.

XII. For proper administration of the respective rights of the parties in this action, it is necessary and proper that general administrative provisions be incorporated in this Decree and that a Water Master be appointed to carry out the provisions of the Decree.

XIII. The parties, persons, corporations, intervenors, grantees and substituted parties named in the following tabulation, and their successors-in-interest and assigns, constitute and are the only appropriators, riparian owners and users of the waters of the Carson River and its tributaries. The sole class of exceptions to the foregoing statement is the landowners on the Newlands Project who took land patents from the United States. Each such landowner is the owner of an appurtenant water right for the patented land as discussed in the opinion filed in this case. The Court has not been provided with a tabulation of these owners and their irrigated acreages. As to the future tabulation of these details, see Administrative Provision VI. All of the above-mentioned parties and their successors and assigns are the owners of water rights to the waters of the Carson River and its tributaries for the legally described acreages or places of use and with the listed priority dates, all contained in the following tabulation.

CONCLUSIONS OF LAW

I. The parties hereto are entitled to a Decree in this action adjudging and declaring that they are the owners and entitled to use the rights set forth in the following tabulation.

II. In accordance with the Findings of Fact and Conclusions of Law, IT HEREBY IS ORDERED, ADJUDGED AND DECREED as follows:

That the parties, intervenors, grantees, successors in interest and assigns are, and each of them hereby is, as against every party to this action, adjudged to be the owners of the water rights hereafter specified and set forth and entitled to divert, store and use from the Carson

River and its tributaries and from the streams and springs hereafter mentioned, and by and through their respective ditches, canals, flumes, dams and reservoirs for the irrigation of their respective lands as described in the tabulation, for generating power, for municipal purposes, for supplying the people living in cities and towns, for reclamation of arid lands, for watering livestock, for domestic uses and other beneficial purposes, water in the amounts discussed in the previous sections on water duty, subject and according to the respective priority dates and riparian ownership stated below and the historic customs, practices, agreements and decrees discussed above.

All points of diversion and places of use are described with reference to the Mount Diablo Base and Meridian. Where an entity owns multiple water rights, that entity is listed at the beginning of a series of water rights from a particular diversion ditch and is not repeated for each place of use. Similarly, if a series of places of use under the same owner all have the same priority date, that date is listed once on the first line of the series and is not repeated for each place of use. The only exception to this system is the tabulation of the water rights in Segment 4, where the Special Master listed the places of use for each owner and then gave total acreages for the relevant priority dates. The listing of owners is correct only insofar as the current information has been supplied to the Court. Any grantees, assignees or successors in interest should contact the Water Master with proof of chain of title.

Acreages and priorities are established in conformity with the evidence taken before the Special Master. Any changes of place or manner of use or point of diversion which have been since approved in the manner provided by the Temporary Restraining Order and Special Master's Report shall be recognized and recorded by the Water Master.

**CENTRAL
NEVADA
DEVELOPMENT
AUTHORITY**

P.O. BOX 2330
HAWTHORNE, NEVADA 89415
(702) 945-3761

September 27th., 1985

Testimony of Mineral County, Nevada Commissioner, Robert C. Lybarger, representing the Central Nevada Development Authority to the Senate Indian Affairs Committee on October 2nd., 1985 and to the House of Representatives Interior and Insular Affairs Committee on October 3rd., 1985, on hearings relative to the Pyramid Lake Paiute and Truckee River Settlement Act of 1985, referred to as S.B. 1558 and H.R. 3213.

Mr. Chairman, Honorable Members of the Committee. I am Mineral County, Nevada Commissioner, Robert Lybarger from Hawthorne, Nevada. As a member of the Board of Mineral County Commissioners, I am duly elected by the Board to represent Mineral County to the Central Nevada Development Authority Governing Board.

The Central Nevada Development Authority (CNDA) is an association of five counties in Nevada organized in 1983 and chartered in 1985 by the State of Nevada by an Inter-local agreement to which all five counties are signatories. I have appended a map of Nevada to this testimony which outlines the boundaries of the counties of Mineral, Nye, Eureka, White Pine and Lincoln. The Inter-local agreement has been signed by the Boards of County Commissioners of all five counties representing a population of approximately 37,000 people. The boundaries of the authority encompasses nearly one-half of Nevadas' land area, is comprised of nearly one-third of the 17 counties of the state and extends across the state from its boundary with California all the way to the Utah state line. From the southern tip of Nye County to the northern boundary of Eureka County, it covers over two-thirds of the length of the state.

The major purpose of the Authority in cooperation with the State Commission on Economic Development is to improve the economic health of the entire region by promoting and sponsoring programs designed to attract industry and tourism and to create economic diversification and thereby economic security for the citizens of the entire area.

In this endeavor, CNDA has reviewed S.B. 1558 and H.R. 3213 and has elected to make this statement relative to the disasterous impacts that passage of the bills in their present form would have not only on Mineral County, but on the economic health of the entire region.

The authority's position on this issue stems in simple terms from the fact that Title II of the California-Nevada Compact which addresses the Walker River Basin, omits clearly defined boundaries of the Walker River Basin and fails to recognize the adverse impacts on the lake and the region by omitting the allocation of water rights to Walker Lake.

In establishing this position, CNDA has thoroughly reviewed the testimony of the Walker Lake Paiute Tribe and that of the Board of Mineral County, Nevada Commissioners and is entirely supportive of the opposition which has been presented by both panels of witnesses. The reasons for this support by CNDA are detailed in the following paragraphs.

Definitions:

On page 25 of Title II of the California-Nevada Interstate Compact, which defines the "Walker River Basin", there is an inadequate and ambiguous representation of Walker Basin as it relates to the Walker Lake. This is a failure of the compact to recognize a natural geographic feature which has existed since the demise of the ice age. The error in defining the limits of the lake at the intersection of the Walker River and the lake and/or at Tier 10 North, Mount Diablo Base Line is not only in violation of topographical accuracy but would surely instigate costly and lengthy litigation to have the error corrected. The definition must be legally accurate by stating the exact boundaries to the existing southern extent of the lake at Tier 8 North, Mount Diablo Base Line and eliminating references to the intersection of the river and the lake and Tier 1 North.

Now it is CNDA's understanding that the failure to recognize Walker Lake was agreed upon so that California, by not recognizing the lake as a claimant would have the right to claim "unused" water upstream. That unused water which could be used to sustain levels at Walker Lake would then be used to promote the economic health of California's depressed communities and in particular would be diverted to replenish Mono Lake which the Los Angeles Water and Power Authority has already destroyed. Hawthorne, Nevada was established on the shores of Walker Lake in 1881 and by historical and traditional use and later reliance on the Lake as a beneficial user for tourism has earned prescriptive rights to that water that pre-dates subsequent court and state engineer allocations for agricultural and other uses. The rationale to destroy Walker Lake by refusing to recognize its geographical existance and at the expense of regenerating a lake that has already been destroyed is one which this committee must overrule in the interest of not only the region represented by CNDA, but to the preservation of the nations' integrity as a whole. We must not stand by and see our resources exacerbated in this manner. CNDA will be supportive of S.B. 1558 and H.R. 3213 only when the correct geographical boundaries of Walker Lake are written into the compact.

Allocations:

As has already been stated, the purpose of the compact is to resolve litigation and to establish water rights for the basins described in the compact. To do this, a commission has been established by the compact and Nevada representatives shall be (page 28, Title 2) " a resident real property owner within and represent the Walker River Basin in Nevada...".

Since Walker Lake lies wholly in Mineral County and is not defined as a part of the Walker River Basin, even those residents of Mineral County living on the shores of Walker Lake, as well as residents of Hawthorne, Mineral County and CNDA will not have a voice in the allocation of water to Walker Lake. Only those residents and users upstream from Walker Lake will have a voice in the allocation of water. By this definition and by the other defined representatives, even the Nevada Department of Wildlife, which has water rights at Walker Lake for the preservation and propogation of wildlife on the lake will not have a voice in the allocation of water to the lake.

CNDA envisages the eventual demise of the lake, particularly during dry years when available water is less than allocated water during which times there is not even a state agency having water rights on the lake represented on the commission to protect the interests of the LAKE. Walker Lake is a regional economic base and tourist attraction bringing potential land owner and thousands of tourist annually crossing Nevada from all directions. The importance of recognizing Walker Lake and providing regional representation on the Allocation Committee cannot be overemphasized. In this respect, CNDA argues strongly for an amendment to the conpact which will provide for the Nevada Wildlife agencies to jointly share and own with Mineral County all waters allocated by the State Engineer to Walker Lake and that the representative to the commission be an individual who represents all interests on the lake from residents, fish and game and to include the entire region which might adversely suffer impacts from loss of water to the lake.

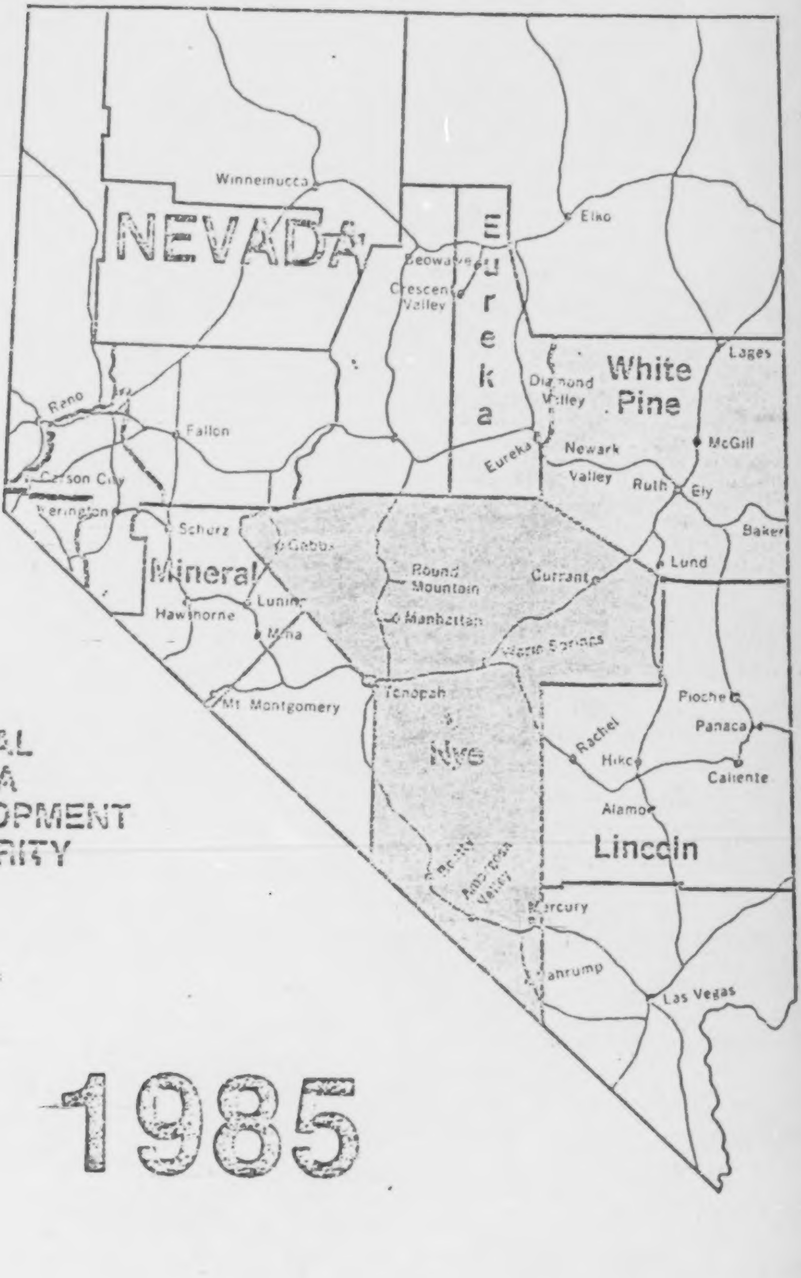
Environmental Impacts:

CNDA maintains an active interest in the ecological aspects of the region. Walker Lake has long been a habitat of the cutthroat trout and numerous species of other forms of wildlife. The continued existence of the cutthroat trout is dependent upon a flush of fresh water when during the early part of each year the melting snows provide a critical element to the spawning of this species. The California-Nevada Compact as written does not recognize and does not make any provisions for this critical aspect of protection for endangered species of the Walker Lake region.

In addition, the loss of water to the lake allowing for the shore lines to recede will significantly impact climatic conditions which will adversely impact human comfort and existence in the Mineral County area. The lake acts as a balancing force to the humidity in the area and the moisture is critical to sustaining numerous species of plant life which when lost will result in the loss of vegetation which is critical to soil stability and erosion control from both winds and flash flooding. Without these climatic control features, the region surrounding Walker Lake could become uninhabitable causing further loss of population and economic depression of far reaching consequences to the CNDA region.

Summary:

As previously stated, CNDA in addition to these and for numercus other reasons opposes the passage of S.B. 1558 and H.R. 3213 in its present form. In closing, CNDA reiterates its strong and complete support of the testimony presented by both the Walker Lake Paiute Tribe and that of Mineral County. These positions have been presented to the appropriate state agencies for consideration and corrective action. The course of events that have led to the presentation of S.B. 1558 and H.R. 3213 to these committees without correcting the deficiencies that exist in the bills leave us no alternative but to appeal our position to the federal level for the needed amendments prior to passage. Among those amendments should be a guaranteed sum of money allocated to Mineral County to purchase upstream water rights for Walker Lake. The State of Nevada has seen fit to allocate not only water but funds to Pyramid Lake. The residents of Mineral County are justified in arguing strongly for equal treatment and CNDA supports them wholeheartedly. This is not to be construed to be critical of those actions contained in the Senate and House Bills, but to request consideration of amendments to the two bills before passage which will insure preservation of Walker Lake, just treatment to all citizens of Nevada, and protection of one of Nevadas' most precious resources, one of its three natural existing bodies of water. CNDA wishes to express its deepest appreciation to the Senate and House Committeees for this opportunity to testify on the bills prior to final action. We deeply appreciate your favorable consideration to the requests contained herein. Thank you from all of CNDA.


NEVADA
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Ely
Eureka
Carson City
Yerington
Schurz
Gabbs
Baker
Round Mountain
Lund
Currant
Mineral
Luning
Hawthorne
Manhattan
Mina
Warm Springs
Tonopah
Mt. Montgomery
Pioche
Panaca
Rachel
Hiko
Caliente
Nye
Alamo
Lincoln
Beatty
Amargosa Valley
Mercury
Pahrump
Las Vegas

CENTRAL NEVADA DEVELOPMENT AUTHORITY

1985

COMMENTS OF MINERAL COUNTY ON S. 1558 AND H.R. 3213

27 September 1985

Donald M. Anderson
Chairman

Robert C. Lybarger
Member

Allen E. Conelly
Member

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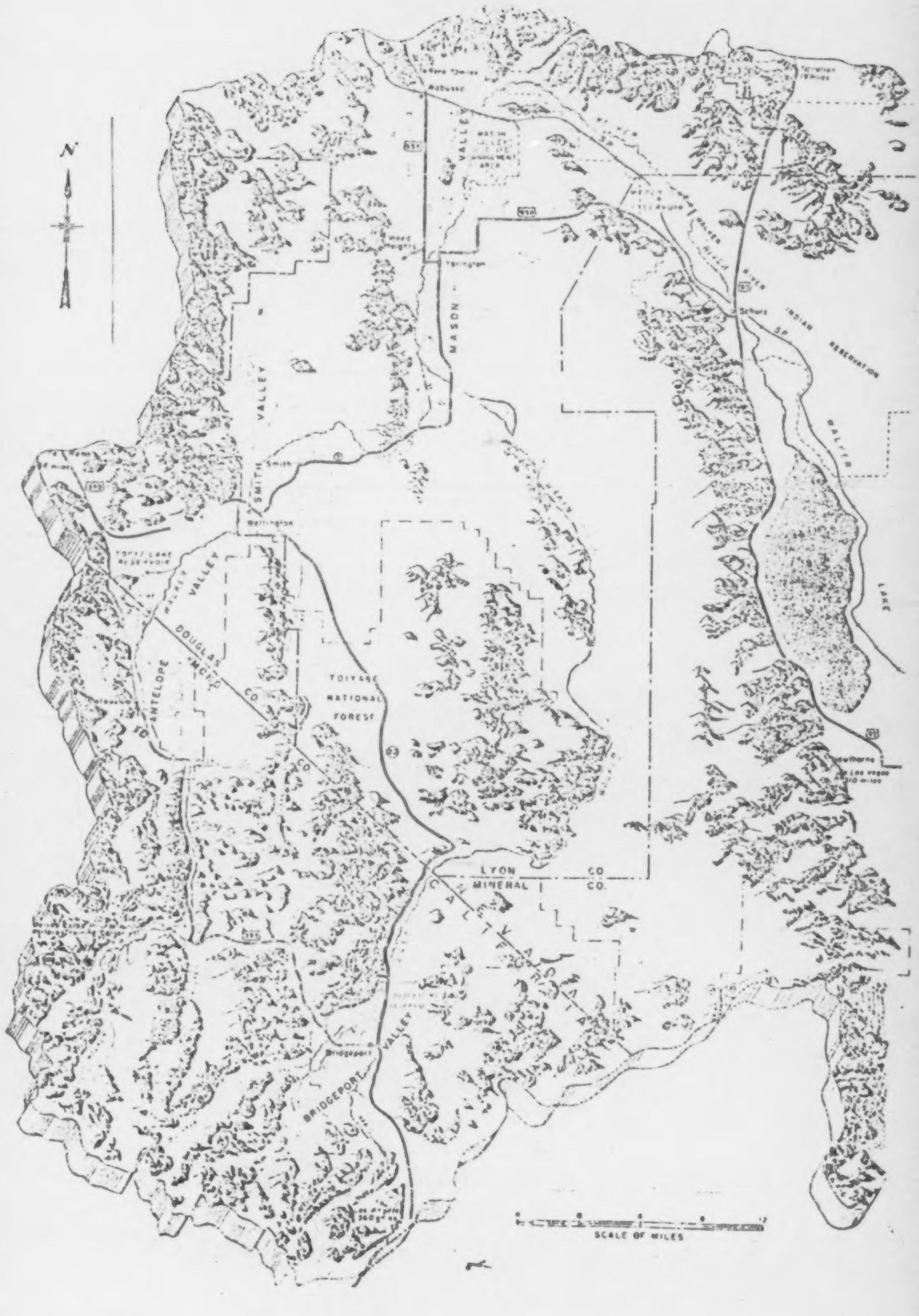
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Hawthorne
Wellington
Smith
Bridgeport
MASON VALLEY
SMITH VALLEY
ANTELOPE VALLEY
BRIDGEPORT VALLEY
DOUGLAS CO
MONO CO
LYON CO
MINERAL CO
CALIFORNIA
NEVADA
TOIYABE NATIONAL FOREST
WALKER RIVER
WALKER RIVER INDIAN RESERVATION
WALKER LAKE
TOPAZ LAKE RESERVOIR
MASON VALLEY WILDLIFE MANAGEMENT AREA
SP
95
95A
395
SCALE OF MILES

PREFACE

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INTRODUCTORY

The citizens of Mineral County are deeply concerned that the California-Nevada Interstate Compact as presently proposed will reek disastrous affects on Walker Lake, and hasten the death knoll which has loomed over the lake's existence as a fishery, since man started diversions of water upstream on the Walker River.

During the 1971 Session of the Nevada Legislature when the Compact was ratified, excluding Walker Lake from the definition of the Walker River Basin, it was not fully cognizable to the citizens of Mineral County the dramatic effect the following years of sparse river flow, due to dry climatic conditions and upstream diversion, would have on the receding shore lines of the lake.

The Nevada Department of Fish and Game filed for water rights for Walker Lake, and later was joined in such application by Mineral County. The State Engineer's Office granted Water Permit #25792 in May of 1972, to the Nevada Department of Fish and Game, for diversion of water from Walker River to Walker Lake in the amount of 8,000 cubic feet per second, subject to existing rights.

The Compact, having been ratified prior to the Engineer's Permit #25792, does not recognize any right of water to Walker Lake from the Walker River Basin. In effect, the Compact terms are contrary to the water permit, and will prevent the application of the permit.

Inclusion of Walker Lake within the definition of "Walker River Basin" in the Compact will assure water rights to Walker Lake when adequate water is available and afford consideration of the plight of the lake in the deliberations of the Compact Commission.

Walker Lake is the natural terminus of the Walker River Basin, and as such should be included within the definition of the basin. Any activity upstream on the Walker River has a direct impact on the well being of the lake which is a compelling reason why the lake should be afforded the same protection under the terms of the Compact as the users of the Walker River upstream.

EFFECTS OF CALIFORNIA-NEVADA COMPACT ON THE MINERAL COUNTY-WALKER LAKE PORTION OF THE WALKER RIVER BASIN

I.

WALKER LAKE AND WALKER RIVER

Walker Lake being the largest body of surface water in Mineral County is the terminus of the entire Walker River drainage which includes about 4000 square miles in Nevada and California. Walker Lake, together with Pyramid and Honey Lakes, are remnants of Lake Lahontan, a large Quaternary age lake. With increased dryness, water levels receded to where Walker Lake Basin was isolated hydrologically from Lake Lahontan and Walker Lake as it is now known occupies the southernmost area of the ancient lake.

Due to the prevailing long periods of continued dryness, diversions for irrigation, seepage and losses to the groundwater basin and evaporation, the stage of Walker Lake is continually receding. The series of terrace and high water marks visible around the Lake are reminders of this decline.

The majority of the flows of the Walker River originate from winter snowfall in the Sierra Nevada Mountains where precipitation at the crest (3,659m) averages 127 cm annually (National Oceanic Atmospheric Administration). The climate of the lake is greatly influenced by the rain shadow produced by the Sierra-Nevada and Wassuk Range. Annual precipitation drops to 51 cm in the highest portions of the Wassuk Range, while Hawthorne at the south end of Walker Lake only receives approximately 10 cm annually. Daily temperatures ranged from -10 C to 12 C in January and between 10 C and 38 C in July. Annual pan evaporation is about 122 cm. Therefore, the climate of the Basin ranges from subhumid in the higher mountains to arid in the valleys and lower ranges.

The level of Walker Lake has been declining very rapidly in recent geological time, with subsequent increase in salinity and alkalinity. Since 1915 the lake's level has dropped at an average rate of 0.6 m per year. If the lake stage continues to recede at this rate it is projected that equilibrium will be reached between the years 2010 and 2060, at which the maximum depth would be approximately 12.2 m (Rush 1970). The estimate from this study is a depth of approximately 7.5 m at equilibrium. Figure 3 depicts the variations in the elevation of Walker Lake from 1915 - 1977. The major cause of this decline prior to 1915 was believed by many observers to be caused by an extended climatic dry cycle over geologic time. Evidence indicates that the lake has been at a much lower level since the time of Lake Lahontan, and it was actually increasing in altitude at the time it was discovered by the white man (Benson 1978). Since the turn of the century upstream diversions of Walker River water by agricultural interests have been the primary factor responsible for the decline in lake level.

F. Eugene Rush, in the report, "Hydrologic Regimen of Walker Lake, Mineral County, Nevada, 1974" stated "From about 1918 to 1968, the trend in stage has been a marked recession, averaging about 2 feet per year."

Figure 4.1 is a plot of the Walker Lake water surface elevation of record. Figure 4.2 is a compilation of the average monthly elevation of Walker Lake for 1968 through 1975. From July, 1969, to July, 1974, the Lake dropped from elevation 3977.4 to 3967.6 or approximately 10 feet in 5 years to also average a decline of 2 feet per year in that time span.

The flows into Walker Lake from the Walker River and drainage from the east slope of the Wassuk Range are unknown but from all sources it is estimated to be in the range of 74,600 to 117,400 acre feet annually and evapotranspiration in the Lake area of 4000 to 4100 acre feet per year, leaving 70,500 to 113,400 available for the Lake. Table 4.2 presents past estimates and the estimate of this report.

Figure 4.1 is a plot of the Lake stage (elevation) between 1905 and 1975. The mean slope of decline line indicated in the Figure 4.1 utilizing the Lake area and volume per stage at 5-year intervals between 1945 and 1970 and an inflow of 85,000 acre feet per year results in a 5-year loss range of 3.8 to 4.4 feet from the Lake surface per year with a mean of 4.07 feet. Future forecasts for the Lake are based on an evaporation loss of 4.1 feet per year.

Upon continued water surface decline, degradation of water quality will also continue as the dissolved solids are concentrated. The main factors controlling the concentration of dissolved solids in the Lake is the volume of water that flows into the Lake, thereby diluting the dissolved solids and the evaporation of water from the Lake surface area leaving the dissolved solids behind and thereby increasing the concentration.

In the report, Hydrologic Regimen of Walker Lake, Mineral County, Nevada by F. Eugene Rush, 1974, it was noted that in September, 1882, the estimated total dissolved solids content of Walker Lake was 2,560 ppm. Because of the high stage of the Lake at that time, the lake water probably has its lowest solute concentration since the dry period of the early 19th century.

Due to the continued decrease in Lake volume, the total dissolved solids content is rapidly approaching 10,000 mg/liter as analysis of the Lake's water in early 1976 indicated a concentration of 9,540 mg/liter of total dissolved solids. A sample taken on June 26, 1976, indicated the TDS was 9738 mg/liter.

Table 4.3 is a compilation of water quality data from several agencies. The U.S. Geological Survey, Water Resouces Division in Carson City, Nevada, has sporadically monitored the water quality of Walker Lake. In 1975 the U.S. Environmental Protection Agency in Las Vegas, Nevada, took several samples at three locations and varying depths in Walker Lake as part of a National Eutrophication Survey.

The Walker River is the principal source of surface water in Mineral County. It enters the County and Walker Lake Valley at the northwest corner, from where it flows approximately 19 miles through the Walker Indian Reservation and discharges into Walker Lake. No surface water is contributed to Walker River in Mineral County other than infrequent storm runoff and irrigation return.

The nearest measured discharge of the Walker River is the Wabuska gauging station located some 10 miles above the Mineral County line. Over the 50 years of actual records the river flow has averaged 115,200 acre-feet per year at Wabuska. The maximum discharge observed was July 10 and 11, 1906, when 3,280 cubic feet per second passed the gauging station. The minimums were no flow at times during the water years of 1924, 1925 and 1931.

The maximum volume was in the water year of 1914 when an estimated 540,000 acre-feet passed the gauging station at Wabuska. During more recent time, in the water year of 1969, 403,200 acre-feet passed the gauging station, which is the third highest annual flow of record. However, the 123,300 acre-feet of average annual flow over the last 28 year period 1948 to 1975 probably reflects more accurately the long term average discharge under the present conditions of upstream development. The average annual flows at the Wabuska gauging station are shown in Table 4.4 along with maximum and minimum discharges during each water year.

The average flow used in forecasting future Lake stages has been taken as 113,000 acre-feet per year. It is anticipated to be more representative for future years. It was obtained by the average of the flow from 1948 through 1975 and excludes 1969.

Table 4.5 is a compilation of average water quality of the Walker River at the Wabuska gauging station. In the past there were sporadic water quality analysis made on the River, but in 1969 the Wabuska gauging station was designated as a National stream-quality accounting network station whereby the quantity and quality of water flowing past the station is continually monitored and the stream flow data is relayed to a LANDSAT satellite, stored and retransmitted to the Office of Data Coordination. During the water year of 1975, monitoring of trace metal content was commenced.

It has been assumed over a period of time the dissolved solids passing the gauging station will reach Walker Lake with an average TDS of 326 or a mean of 320 mg/l. The 113,000 acre-feet of flow carries approximately 98 to 100 million pounds of dissolved solids each year.

MINERAL COUNTY AND WALKER LAKE GENERAL LOCATION

Mineral County is located in the West-Central portion of Nevada. The southwest boundary of Mineral County is also the

State line dividing California and Nevada. The rugged Wassuk Range of mountains serves as a physical barrier along the western and northwestern boundary dividing Mineral County from Lyon County. Mineral County is bounded by Churchill County to the north, Nye County to the east and Esmeralda County to the south.

HISTORICAL BACKGROUND

The use of the County's resources began with early travelers and explorers. Peter S. Ogden was probably one of the first white men to see Walker Lake in 1829, when he entered Nevada on the way to Southern California. Ogden followed the Humboldt River to its sink, passed near Weeks, Adrian Valley and along the north end of Walker Lake.

John C. Fremont, perhaps the best known of Nevada's trail makers, in 1845 was exploring eastern Nevada, crossed the Ruby Mountains at Harrison Pass and continued southwesterly to about Austin and over to Walker Lake. Joseph Walker, for whom Walker Lake and River were named, veteran of several previous trips through the state, was accompanying Fremont westward and they split the party with Walker and his group crossing the Ruby Mountains at Secret Pass, then westerly along the Humboldt River, through the Humboldt Sink and southerly to meet Fremont at Walker Lake.

Prior to 1849, none of the travelers or explorers had stayed in the County to make their homes. The area to most people seemed to be a harsh land of barren wastes and high mountains.

In the late 1850's some settlement took place along the Walker River. A drought in 1862-1864 brought ranchers to the River where some irrigation was developed to supply additional feed for their livestock.

In 1859, the discovery of silver in the Comstock of Virginia City brought hordes of prospectors into the County. The discovery of gold and silver in Aurora and Bodie, California, brought many people into the area and caused many miles of wagon roads to be constructed. The mining activities were carried on with a total disregard for the environment. Prospect holes, rusted and broken equipment and tailing dumps dot the landscape in the mining areas.

The Walker River Paiute tribe of Indians inhabited the lower Walker River and the north shore of Walker Lake. The files of the Nevada Indian Agency, U. S. Bureau of Indian Affairs at Stewart indicate that early in November, 1859, Indian Agent Dodge recommended to the Secretary of the Interior that lands in the vicinity of Walker Lake be set aside for the use of the Paiutes and Shoshones of that region. The Secretary issued a directive to this effect on November 29, 1859, and a survey of the reservation area was made in 1864.

However, it was not until March, 1875, that a presidential Executive Order made the creation of the Walker

Lake Indian Reservation official. Reservation headquarters were located at Schurz, where they have since remained.

At this time, the reservation area was 320,000 acres. In 1906 it was reduced to 85,760 acres, but by several accretions over the years since that date, notably a 171,200 acre addition of public domain lands in 1936, the reservation was built up to its present boundaries of 320,511 acre size.

Prior to Nevada obtaining statehood, Aurora was the first county seat of Esmeralda County which included the area of Mineral County as it is known today. Hawthorne, the largest population center in the subbasin, sprang suddenly into being with the arrival of the Carson & Colorado Railroad at the site on April 7, 1881. On April 14 an auction of lots in the townsite, already surveyed and staked out by the railroad, started the town off with a rush.

Besides its early-year importance as a division point on the railroad, Hawthorne quickly developed into the transshipment point for mail, passengers, express and freight bound for Bodie and Aurora, via the Walker Lake and Bodie Toll Road. In 1883 Hawthorne snatched the Esmeralda County seat honors away from faded Aurora, and in turn lost them to booming Goldfield in 1907. With the increase of mining activity around Hawthorne and Mina, the residents of the northern half of Esmeralda County requested the State Legislature of 1911 to divide the county. The newly created county was aptly named Mineral, and Hawthorne was again designated as the county seat.

In 1928, the Department of the Navy moved into the county to establish an ammunitions manufacturing depot following the explosion of a naval ammunition arsenal in New Jersey in the mid-1920's. This lightning-induced explosion inflicted heavy damage and loss of life in the densely populated area surrounding the arsenal; the Navy thereupon began hunting for a new site in some sparsely populated part of the West. It finally settled upon the Hawthorne-Wassuk Range-Walker Lake region in western Nevada. Since Hawthorne could not accommodate all the personnel needed to service the new base, the Navy built it own "company town" -- Babbitt, two miles northwest of Hawthorne. The manufacture and storage of ammunition were expanded to meet the demands of the Second World War and the Korean Conflict.

TOPOGRAPHY

Physiographic Features

Mineral County encompasses about 3,800 square miles, with the major portion located within the Great Basin section of the Walker River subbasin. Valleys in the Great Basin and in Mineral County have a generally integrated, but not a well developed drainage system and are separated by northwest to northerly trending and irregular mountain masses.

Walker Lake is the largest body of water in the County. The only other water body is Weber Reservoir on the Walker River Indian Reservation. Small perennial flows in the larger canyons of the Wassuk Range are sustained by springs and snow-melt.

Topography

Terrain in Mineral County is divided into mountains, less steep intermediate slopes flanking the mountains, and the valley floors, most of which are closed basins or sinks such as Walker Lake, which is the terminus of the Walker River. Higher peaks in the mountains are between 6,000 and 8,000 feet in elevation except for those high peaks in the Wassuk Range. Most of the peaks in the Wassuk Range are above 9,000 feet in elevation, with Mount Grant being the highest at 11,239 feet. Corey Peak is 10,520 feet in elevation.

The valley floors are generally above 4,400 feet in elevation, with Walker Lake being the lowest point in the County at 3,966.9 feet average during the month of September, 1975.

Features which occur on the valley floors throughout the County include flood plains and channels. Salt marches and alkali flats occur in some of the valleys located east and southeast of Walker Lake.

CLIMATE

The climate of Mineral County has an arid to semiarid characteristic in the valleys and ranges to sub-humid in the higher mountains. The climate is greatly influenced by the eastern rain shadow of the Sierra Nevada mountains and the Wassuk Range. Accordingly, humidity and precipitation in the lower valleys are low and temperatures are high. Snow up to 60 inches in the mountains during the winter months and localized thundershowers during the summer months provide most of the precipitation. Hawthorne, at about elevation 4,190, has a mean annual temperature of 55.1°F., a mean frost free season of 135 days and a mean annual precipitation of 4.58 inches.

VEGETATION

Vegetation in Mineral County is typical of most all arid to semiarid climates. Sagebrush and other desert shrubs grow in the valleys and on the lower slopes of the mountains.

Mixed juniper and pinon pine forests are predominant in the higher elevations of the mountain ranges. Mountain mohogany is also abundant in the higher parts of the Wassuk Range.

Aspen and cottonwood trees grow along the streams and near springs on the eastern slope of the Wassuk Range.

POPULATION

Mineral County ranks twelfth in size and in 1970 ranked eighth in population among the seventeen counties in the State of Nevada, yet ranks third in the State as having almost 90 percent of the land within the County under public ownership. This has concentrated most of the population into and around Hawthorne and Babbitt where about 84 percent of the population of the County resides. The activity at the Hawthorne Army Ammunition Plant has reduced to post World War II status. This reduction, in turn, has reduced the economy base, jobs and, as a result, a reduction in population since 1970. The current 1985 estimate of population is 6,200 of which 84 per cent reside in the Hawthorne-Babbitt area.

LAND USE

Mineral County's land use pattern has been very stable over the years inasmuch as 82 percent is controlled by the Federal Government and 9.5 percent is under the ownership of the Walker River Paiute Indians. Out of the total land within the County, there is only about 3 square miles that could be classified as urban. The rest of the County is rural in nature. Most of the public land is controlled by the Bureau of Land Management, Forest Service and Hawthorne Army Ammunition Plant, all agencies of the Federal Government. The County owns 3,365 acres or about 0.1 percent of the total land within the County.

ECONOMY

Mineral County is unique in regard to its isolation. The Navy sought the remoteness in which to establish the Naval Ammunition Depot, now known as the Hawthorne Army Ammunition Plant, which forms and supplies the economic base for Hawthorne and the County. It is reported that over 50 percent of the labor force within the County was employed by the U. S. Navy and/or other Federal Government agencies in 1970.

The services industry sector of the County, centered in Hawthorne, includes lodging, restaurant and casino workers that make up the local gaming industry, which provides employment for aproximately 20 percent of the labor force.

Employment linked with tourism is not easily definable as it is linked with services and retail sales. The tourism activity is based primarily on the resources of Walker Lake for boating and fishing for the Lahontan Cutthroat Trout and the gaming industry in Hawthorne. In 1985, the estimated value of Walker Lake as a fishery was $403,350.00 per year, and $1,058,670.00 for other recreational purposes.

WALKER LAKE FISHERY

Since historical times the lake has provided a significant source of protein to man. Aboriginal Indians, of todays Paiute Tribe, utilized the Walker Lake's bountiful resources for food and barter (Snyder 1917, Bathe 1978).

Petroglyphs found near the lake show fish swimming out of the lake and up the river. Further evidence of the importance of the fishery to the Indians is in the naming of the individual bands around the lake. The group that lived at the mouth of the river where the trout made their annual spring migration were called the "Trout Eaters", and those that lived at the south end were called "Chub Eaters" (Allan, NDFG 1958).

By the late nineteenth century the early white settlers were also harvesting trout from both Walker and Pyramid Lakes. One such record from Pyramid Lake shows that during the winter and spring of 1888 and 1889, in a period of only six months, one hundred ton of trout were caught by commercial fishermen and shipped by Wells Fargo express and the railroad to many parts of the United States (Wheeler 1969). Many fish from both lakes supplied the early mining camps such as Virginia City, Tonopah, Goldfield and Manhattan.

The history of the Lahontan Cutthroat Trout fishery in Walker Lake shows its deterioration between the years of 1935 and 1949 as a result of dam construction of the Walker River and subsequent loss of natural spawning habitat (Allan, NDFG 1958). The construction of Weber Dam in 1953 put an end to the annual spawning migration of the cutthroat trout to the upper reaches of the watershed, where habitat conditions were satisfactory for successful reproduction. The trout population is now maintained through hatchery and stocking programs currently being conducted by the state and federal governments. La Rivers (1962) states that it was the Walker Lake strain of Lahontan cutthroat which was used to restock Pyramid Lake after that strain became extinct in that body of water due also to upstream degraded spawning habitat in the Truckee River.

Due to the lake's receding level and subsequent increasing salinity and alkalinity coupled with high summer epilimnetic surface temperatures and hyplimnetic oxygen depletions, the fishery is in serious jeopardy.

Efforts have been made to introduce other species into Walker Lake. Transplant attempts have been made with several salmon species, including Silver, Coho, and Atlantic Salmon, several salt-water sunfish, and the highly salt-tolerant Corvina from the Salton Sea--all with no success. There are reportedly two bodies of water, one in Africa and one in Russia, with salt concentration similar to that of Walker Lake that are able to sustain game fish populations. It is possible these species could be adapted to Walker Lake. However, in view of the results of previous transplant attempts with other species, the outlook for maintaining a viable fishery in Walker Lake is not good.

II.

CALIFORNIA-NEVADA INTERSTATE COMPACT

Exclusion of Walker Lake

As presently drafted the Compact excludes Walker Lake from the definition of "Walker River Basin".

Article II Paragraph F of the Compact states:

> "F. The term 'Walker River Basin' shall mean the area which naturally drains into the Walker River and/or Walker Lake upstream from the intersection of the river and/or lake in Mineral County, Nevada, with the northern township line of Tier 10 North, Mount Diablo Base Line."

Walker Lake is the natural terminus of the Walker River and is an integral part of the entire basin. Any impact on the Walker River upstream has a direct effect on Walker Lake.

This integral relationship between a terminal lake, and the sole river which is it's primary source of water has already been recognized by this Compact in the situation of the "Truckee River Basin".

At Article II, Paragraph D, the Compact states:

> "D. The term 'Truckee River Basin' shall mean the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake *including such lake*, but excluding the Lake Tahoe Basin."

(Emphasis added)

Pyramid and Walker Lakes share many attributes of similarity. They are both natural lakes being remnants of the Lahontan Lake. As previously noted, both are terminus lakes in their respective river basins. Historically native Americans have habitated both shores, and presently both are included within the boundaries of Indian Reservations. Each support fisheries of Cutthroat Trout as the major game fish. Tourist recreationists and sports enthusiasts at both locations provide a major economic stimulus to the local rural communities in the area. Foliage and plant life surrounding each is consistent with the high desert terrain common to both.

Without Walker Lake being included within the definition of the Walker River Basin, administrative, and judicial decisions could be made in accordance with the Compact without consideration for Walker Lake, even though these decisions may be detrimental.

The California-Nevada Compact Commission as presently comprised would not permit anyone from Mineral County, other than a resident of the Walker River Indian Reservation, to serve as a member of the Commission, even though all the residents of Mineral County have an interest in the lake. These interests, in many cases, may be divergent from those of the Indian Tribe.

Even more importantly, inclusion of Walker Lake within the definition of the basin, would give non-reservation residents of Mineral County, standing to raise issue concerning proposed actions of the Commission or to request that certain actions be taken, pursuant to the authority vested by the Compact.

On December 12 through 28, 1983, the State Engineer of Nevada recognized that water entering into Walker Lake from Walker River is of beneficial use for recreational purposes, and granted the Nevada Fish and Game Department's application, filed in 1970 and tentatively approved in May, 1972, for water rights from Walker River for use in Walker Lake in the amount of 795.2 cubic feet per second of water or 578.870 acre feet per year, subject to all prior and existing water rights on the river system. This in effect gave to Walker Lake all flood waters, as usually there is only sufficient water in the river to handle existing water rights during normal flow.

The Compact, however, contemplates the construction of new major storage facilities on the West Walker River in order to capture water released from Topaz Reservoir in order to make additional storage space available in Topaz Reservoir to avoid flood damage later in the year. Once the new storage facility is in place, any water released beyond said location will have been deemed to have been held in storage. This will mean, then, that the water not stored and allowed to go downstream will apply toward Nevada's allocation of water, thereby in high runoff years permitting the "unused water" provisions of the Compact to come into effect.

This same scheme of determining "unused water" upstream, also applies to the water rights allocated to Weber Reservoir and the Walker River Indian Reservation downstream. In fact any number of storage facilities could be constructed upstream and store water adversely to the storage rights of Weber Reservoir, so long as the water is released following the spring floods of each year to satisfy Weber Reservoir rights to the same extent as they would have been satisfied in the absence of said adverse upstream storage.

Consequently the Compact eventually will bring about the result of not permitting any water to remain in the river below Weber Reservoir, other than that released to meet the water rights of the Walker River Indian Reservation, and those waters returning to the river as discharge from irrigation practices.

The Compact precludes in Article VIII 4.(a) the consideration of existing diversions and uses of water downstream from Weber Reservoir in determining the amount of water to be allocated to each state respectively.

"Unused water" includes all waters of the Walker River and its tributaries in excess of the amounts allocated as defined by the Compact. This unused water is to be divided 35% to California and 65% to Nevada.

Each state may develop separate surface storage projects to develop the unused water of the West Walker. California may even hold unused water adversely to Nevada, subject to release for consumption in Nevada in the same amounts, times and places, had the unused water been stored in Nevada; provided further, that Nevada shall not be deprived of water required for (1) maintenance of a minimum reservoir level for the preservation of fish life and (2) nonconsumptive uses which are found by the Commission to be in the public interest of the Walker River Basin as a whole.

Furthermore, "unused water" shall be used only within the Walker River Basin.

Under the present Compact terms, then, the water rights granted to the Nevada Fish and Game Department for Walker Lake, cannot be preserved or perpetuated.

Inclusion of Walker Lake within the definition of Walker River Basin would assure that the existing junior water rights, including Walker Lake's, could be taken into consideration by the Commission in its actions concerning appropriation of water, and it would further assure that any water declared to be "unused" could be appropriated to Walker Lake as being in the public interest of the Walker River Basin as a whole.

III.

CHANGES IN COMPACT THAT WOULD BE NECESSITATED BY INCLUSION OF WALKER LAKE IN DEFINITION OF WALKER RIVER BASIN

Changes to the existing Compact, would be minimal as the provisions of the Compact already recognize that the diversion of water is to be in accordance with the state's recognized rights, as provided under the law of the state where the diversion is made. The Nevada State Engineer's Office has previously granted to the Nevada Fish and Game Department the right to divert from the Walker River to Walker Lake 575,879 acre feet of water annually.

Provisions would need to be included concerning the flow of the river to satisfy the water rights of Walker Lake as established by the Nevada State Engineer, prior to a determination and allocation of unused water between California and Nevada.

Additional provisions requiring water being diverted upstream for storage adverse and junior to Walker Lake's rights to be released to satisfy those rights in such amounts as determined by the Watermaster, would also need to be included. CF Article VIII 4.(b)

Article VIII 4.(a) would need to be amended to reflect that the allocation of water between the states would reflect the uses of Walker River Basin diverted downstream from Weber Reservoir and not specifically covered in Decree C-125.

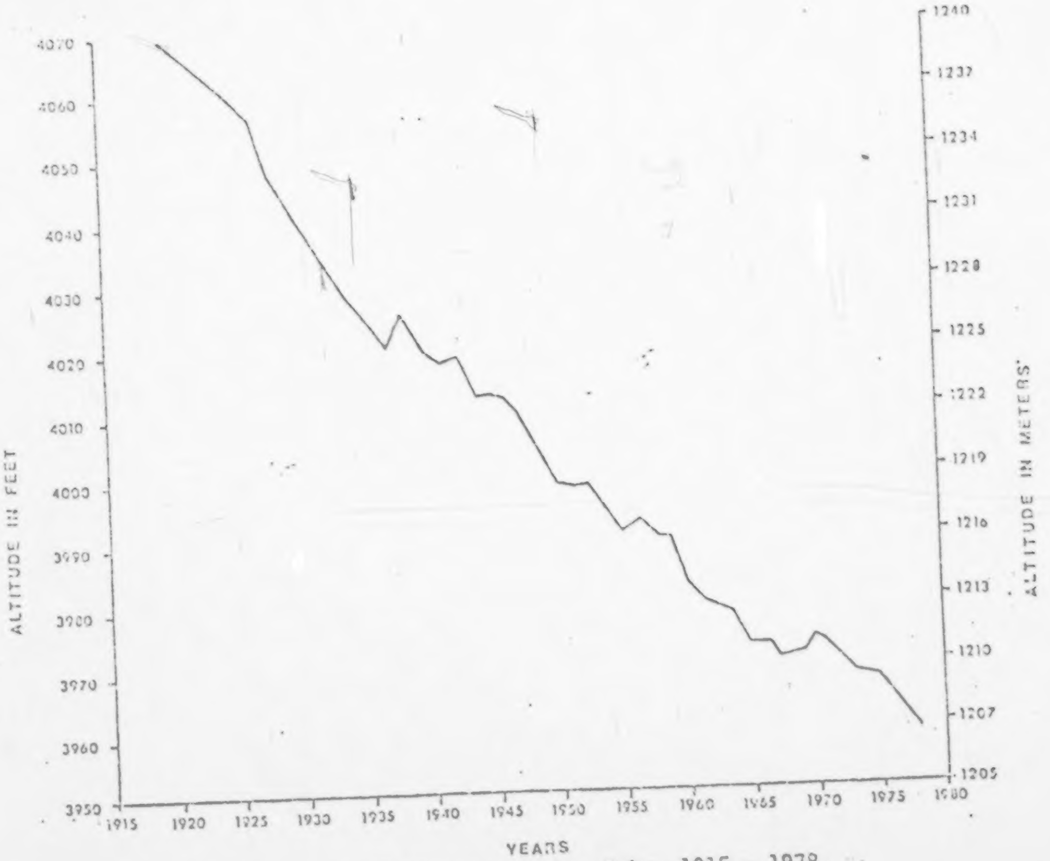
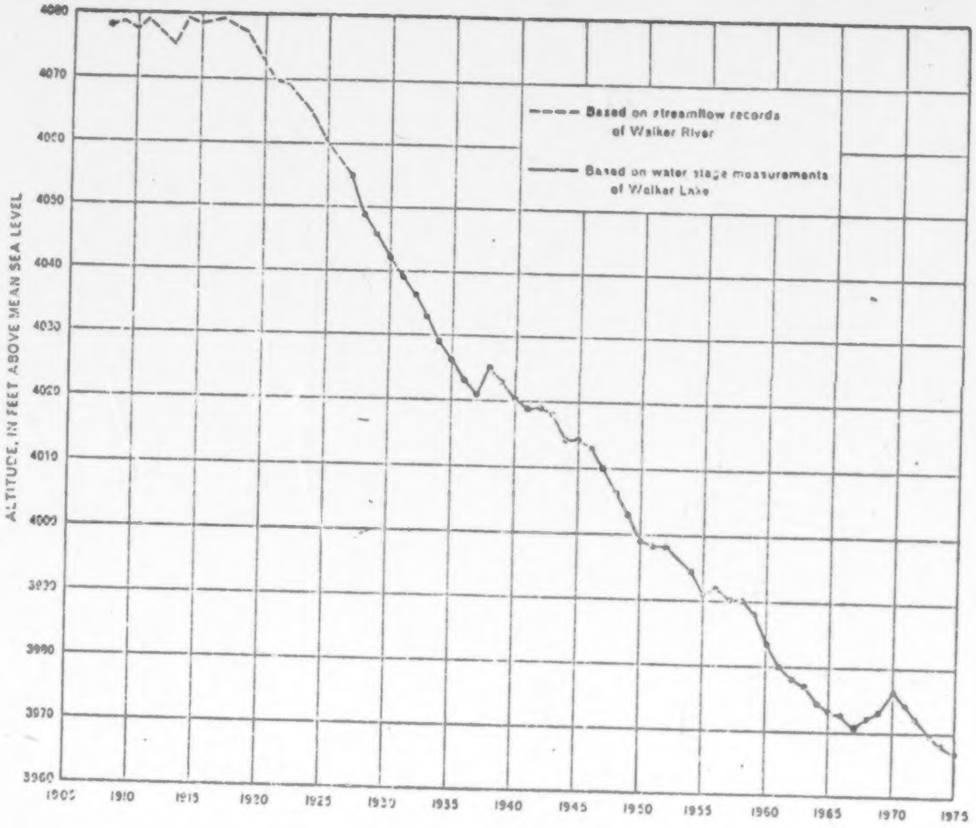
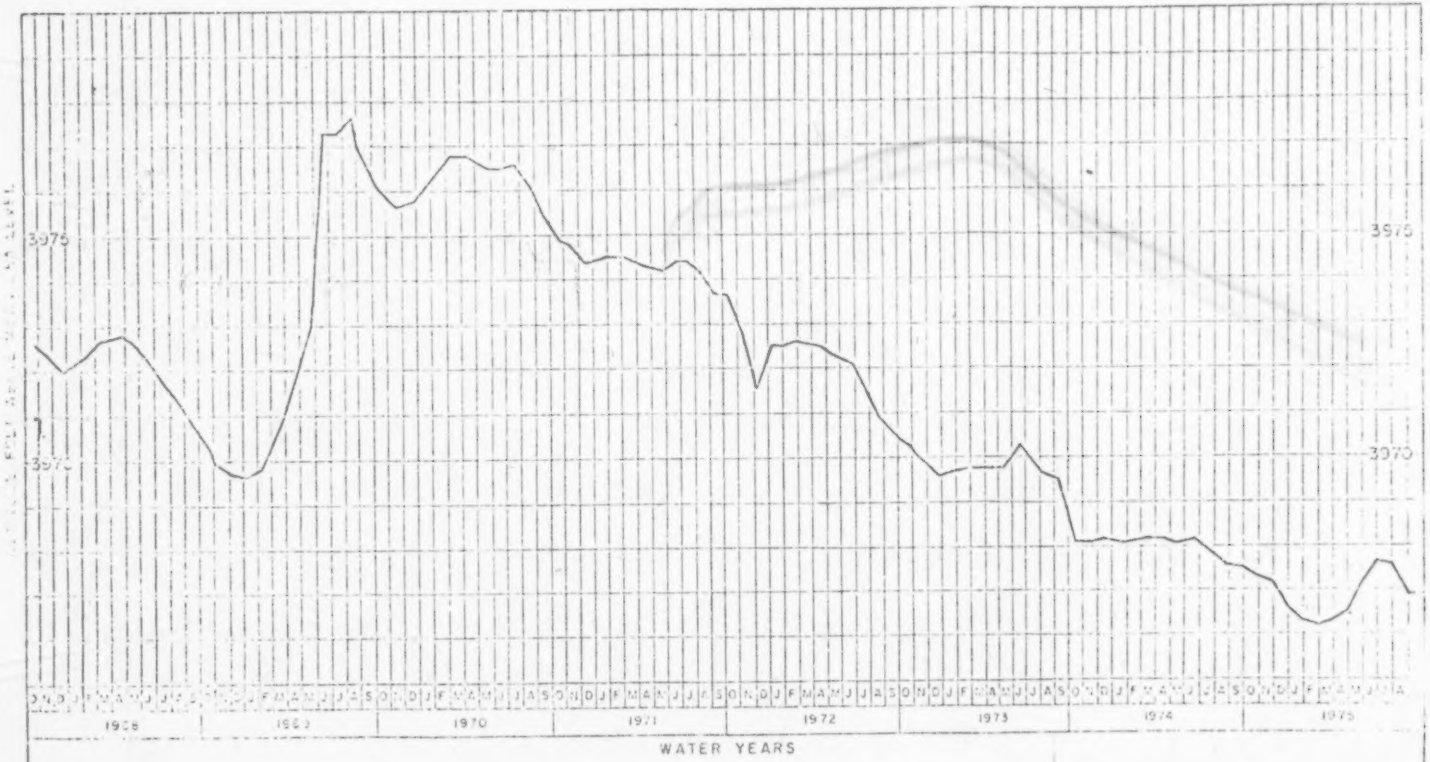


Figure 3. Variations in the Altitude of Walker Lake, 1915 - 1978.



VARIATIONS IN STAGE OF WALKER LAKE, 1908-75

FIGURE NO. 4.1



NOTE: U.S.C.&G.S. BENCH MARK U.S.N.A.D. HAWTHORNE
ELEVATION 4,053.41

SOURCE: WATER RESOURCES DATA FOR NEVADA
WATER YEARS 1968 THROUGH 1975

MINERAL COUNTY WATER RESOURCE STUDY

MONTHLY STAGE ELEVATIONS OF WALKER LAKE

FIGURE NO. 4.2

TABLE 4.3

WATER QUALITY OF WALKER LAKE

Date	Approximate Location of Sample Points	Depth Ft	Water Temp °C	EC MMHOS @25°C	pH	[illegible] mg/l	Mg mg/l	Na mg/l	K mg/l	HCO_3 mg/l	CO_3 mg/l	SO_4 mg/l	Cl mg/l	F mg/l	NO_3 mg/l	As mg/l	Hardness $CaCO_3$ mg/l	TDS mg/l
2/18/66	(1) NE 1/4 NW 1/4, Sec Sec. 32, T. 10N., R.29E.	-	5	12,100	9.3	4.2	123	3020	159	1630	484	1920	2010	20	1.0	-	520	8470*
4/7/66	(1) Center of Walker Lake	100	-	12,400	9.4	11.0	120	2880	184	1510	575	1890	1960	17	1.7	-	522	8390
12/13/72	(1) Lat. 38°40'; Long. 118°45'	90	6.7	11,700	9.5	7.6	130	3100	170	1700	553	2000	2100	20	-	0.98	550	8920
3/6/74	(1) Lat. 38°40'; Long. 118°45'	90	5.0	13,400	-	-	-	3100	-	-	-	-	2200	-	-	-	-	9340
1/15/75	(1) Lat. 38°40'; Long. 118°45'	96	6.0	13,300	9.3	-	130	3200	170	1700	604	2200	2300	-	-	-	-	9530
3/17/75	(2) Center of Lake 3/4 mi. off W. Shore	60	4.7	11,856	9.5	-	-	-	-	-	-	-	-	-	2.5	-	3920(3)	8300*
11/6/75	(2) Center of Lake 3/4 mi. off W. Shore	34	14.5	9,172	9.4	-	-	-	-	-	-	-	-	-	1.7	-	3960(3)	6420*

(1) Analysis received from the U. S. Geological Survey, Water Resources Division, Carson City, Nevada
(2) Analysis received from the U. S. Environmental Protection Agency, Water Resources Division, Las Vegas, Nevada
(3) Total Alkalinity as $CaCO_3$
* Calculated as 70% of the EC @ 25°C

TABLE 4.4

ANNUAL DISCHARGE OF WALKER RIVER NEAR WABUSKA, NEVADA

WATER YEAR	MAXIMUM DISCHARGE c.f.s.	MINIMUM DISCHARGE c.f.s.	ANNUAL FLOW Acre-Feet
1948	114	3.5	31,070
1949	200	9.0	36,520
1950	135	15	30,330
1951	1,750	25	158,600
1952	1,800	45	379,000
1953	955	25	121,800
1954	167	28	43,340
1955	260	12	34,620
1956	2,350	15	277,000
1957	535	41	88,350
1958	1,880	45	227,300
1959	316(a)	8.5	70,590
1960	128(a)	9.1	26,260
1961	149	10	23,780
1962	480	4.0	37,260
1963	2,230	25	169,200
1964	168	14	51,540
1965	909	8.6	123,200
1966	742	16	107,600
1967	2,110	7.5	237,100
1968	532	19	90,710
1969	2,680	26	403,200
1970	935	27	134,900
1971	1,060	22	93,720
1972	321	13	63,970
1973	1,430	16	104,400
1974	1,040	24	121,600
1975	1,350	42	165,200

Average Annual Flow 123,291 AF

(a) *Momentary maximum*

Data compiled from the annual reports "Water Resources Data for Nevada", U. S. Department of Interior, Geological Survey, State of Nevada and other agencies.

TABLE 4.5

WALKER RIVER WATER QUALITY AT WABUSKA, NEVADA
(FROM WATER RESOURCES DATA FOR NEVADA
U. S. DEPARTMENT OF INTERIOR, GEOLOGICAL SURVEY ANNUAL REPORTS)

Water Year Oct-Sept	Temp °C	Elec. Cond. MMHO/CM @25°C	pH	CA mg/l	MG mg/l	NA mg/l	K mg/l	HCO_3 mg/l	SO_4 mg/l	Cl mg/l	F mg/l	NO_3 mg/l	NH_4 mg/l	PO_4 mg/l	SIO_2 mg/l	B mg/l	Total Dissolved solids mg/l
1969	12	397	7.2	22	5	26	3.7	114	25	7.7	0.5	-	-	-	17	189	167
1970	11	466	7.5	39	9.1	54.9	4.9	190	66	20.1	0.9	0.7	0.03	0.8	22	361	313
1971	12.5	535	7.8	40	9.7	58.6	5.8	207	82	21.8	1.0	0.3	0.30	0.5	28	-	342
1972	14.5	538	7.9	45	10.7	69.0	5.8	225	86	27.2	0.9	0.2	0.10	0.3	28	-	374
1973	14.0	508	7.9	39	8.8	55.0	5.2	205	68	19.7	0.8	0.1	0.10	0.2	26	-	325
1974	14.5	482	-	37	8.6	50.3	5.0	193	58	17.0	0.7	0.1	0.13	0.3	24	-	297
1975	15.5	477	8.1	38	8.0	52.5	4.9	200	56	15.9	0.7	0.1	0.20	0.1	22	-	306

PREPARED STATEMENT OF

WILFRED SHAW, CHAIRMAN

PYRAMID LAKE PAIUTE TRIBE OF INDIANS

ON S. 1558

BEFORE THE SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES

October 21, 1985

I am Wilfred Shaw, Chairman of the Pyramid Lake Paiute Tribe. I want to thank you for giving me the opportunity to appear before this Committee on a matter of such great importance to the Pyramid Lake Paiute Tribe.

The Tribal Council of the Pyramid Lake Tribe has authorized me and Mr. Michael Thorp, our Tribal Attorney, to present to this Committee the Tribe's position on the Pyramid Lake Paiute and Truckee River Settlement Act of 1985.

Congress is being requested to help resolve the Pyramid Lake-Truckee River water rights controversy through the enactment of S. 1558. My personal belief, which is shared by the Pyramid Lake Tribal Council and by our tribal attorneys, is that the Pyramid Lake and Truckee River water and fishery related issues must ultimately be addressed and solved through a fair, just and equitable negotiated settlement that is aided by federal legislation. The Tribe has consistently demonstrated a firm commitment to the negotiation process. For example, last year the Tribe took the lead in negotiating the terms of a consent decree which resolved one of the most vexing problems on the Truckee River, the excessive diversions of water to the agricultural lands surrounding Reno and Sparks.

Pyramid Lake is the heart and soul of the Pyramid Lake Paiute Tribe and the Pyramid Lake Indian Reservation; the Truckee River is our lifeblood. The Lake, which is about the same size as its sister, Lake Tahoe, and its fish are the source of our sustenance and livelihood, spiritual, physical and financial.

We call ourselves "cui-ui dakodo," cui-ui eaters. The cui-ui is not only an endangered species, it is the sole remaining member of its genus. It is found only in Pyramid Lake.

The lake is an unbelievably fertile habitat for Lahontan cutthroat trout. The world record for the species, a forty-one pounder, was caught in Pyramid Lake by a tribal member in 1925. We have always shared our trout with others, first with other Indian tribes, then with the white people who came to our area. In fact, the first non-Indians to visit Pyramid Lake, Captain John Fremont and his party in 1844, recorded their astonishment at the extraordinary size and superb taste of our trout as well as at the Tribe's hospitality and generosity. In the late 1880s, 100 tons of Pyramid Lake trout were shipped all over the United States by Wells Fargo Express. In 1912, between ten and fifteen tons of Pyramid Lake trout per week were shipped across the country. In the 1920s and 1930s, Pyramid Lake was a world-renowned fishing resort and was visited by the likes of President Herbert Hoover, Clark Gable, and Supreme Court Justice and United States Attorney General Harlan Fiske Stone. But the trout disappeared from the lake in the 1940s because there was not enough water for them to get to their Truckee River spawning grounds.

The cui-ui cannot be harvested since they are endangered. Its condition is extremely fragile; the Fish and Wildlife Service estimates that more than ninety percent of the cui-ui in the lake today were spawned in 1969. Male cui-ui are sexually active until they are sixteen or seventeen, so the cui-ui are in real trouble.

The trout are on the way back, thanks to the Tribe's hatchery program. In the 1950s, the State of Nevada began planting trout in the lake. Their tests showed that, contrary to popular belief, the Lake could still support Lahontan cutthroat trout. Later, under the Washoe Project Act, the federal Fish and Wildlife Service began stocking the Lake. In the 1970s, Congress appropriated funds for a tribal trout hatchery which began operating in 1974. We now have two trout hatcheries which are operated very successfully by the Tribe. In 1985, we planted almost 2,000,000 trout fry and fingerlings compared to about 400,000 in 1977. We are currently expanding our facilities which, when completed, will double our production to about 4,000,000 trout fry and fingerlings annually.

Our tribal enterprise, Pyramid Lake Fisheries, is the largest employer on the Reservation. All but a few of its thirty-one employees are tribal members. Pyramid Lake Fisheries also has operated the tribal cui-ui hatchery since 1979. We have pioneered new techniques which have enabled us to increase the hatchery production of cui-ui from about 5,000 in 1979 to more than 8,000,000 this past year. As we learn more about the fragile and mysterious cui-ui, the prospects for its survival and ultimate recovery grow brighter if - and this is a big if - there is sufficient inflow into Pyramid Lake from the Truckee River.

On behalf of the Pyramid Lake Tribe, I want to extend our appreciation to the Congress, particularly to the Nevada delegation. Without their efforts, the Tribe's fishery restoration efforts would not have been possible.

The quality of Pyramid Lake's trout fishery is improving rapidly, though it is still a far cry from both what it used to be and what it is capable of being. Twenty pounders are being caught again regularly. The Federation of Fly Fishers, a 40,000 member international organization recognizes Pyramid Lake as one of the best trophy trout fisheries and the only quality cutthroat trout fishery in the world. Pyramid Lake's trout consistently have taken first, second and third places in Field and Stream cutthroat trout contests. Recently, Ray Johnson, a world famous professional trout fisherman, broke five line class world records at Pyramid Lake during a six-day period.

The number of angler days spent by fishermen at Pyramid Lake increased from about 50,000 in 1980 to about 80,000 in 1985. During the past four years, the average time it has taken an angler to catch a fish that is large enough to keep decreased from five hours to three and a half, while the average size of the keepers increased from less than 20 inches to about 21¼ inches. There are also a large number of visitors to the Lake who come to enjoy water sports or the magnificent and beautiful environment of the most beautiful desert lake in North America. Income from the anglers and other visitors to the Lake is the Tribe's major source of revenue.

I am telling you all of this so that you who are so far away in Washington will be able to realize the true magnificence and national importance of the resource that we are trying to save, preserve and recover through the proposed settlement legislation. The Tribe believes that congressional action to save

Pyramid Lake is especially appropriate for two additional reasons. First, from time immemorial, the Pyramid Lake Paiute people sustained themselves from this remarkable renewable resource. It took less than one hundred years after the coming of the white man to North America for it to be destroyed. The cause of its destruction was the enormous diversions of the waters of the Truckee River to the Newlands Reclamation Project under authority of a congressional action, the 1902 Reclamation Act. That project was built at a time when reclamation of arid lands was the rage and protection of the environment was, at most, an afterthought. It would never be built today. Second, Pyramid Lake, the cui-ui, the cutthroat trout, and the Pyramid Lake Tribe have been the innocent and abused victims of the American legal system. The Tribe lost its most valuable and cherished right without ever having had its day in court. In his Brief to the United States Supreme Court, Solicitor General Rex Lee stated that the federal government did not know of any other situation in which the interests of an Indian tribe had been so badly represented in litigation by the United States Justice Department. The Tribe therefore believes that Pyramid Lake and its endangered and threatened fish are an especially worthy subject of Congress' concern and assistance.

The Pyramid Lake Tribal Council studied the proposed settlement legislation with great care. We have literally met until the very wee hours of the morning straining our eyes and our minds. It has not been easy. It seems that there are new changes, additions, proposals and corrections that have to be considered every time we meet. The language and structure of the bill seem to be unnecessarily complex and difficult to decipher. That is even more true of the Compact which the Pyramid Lake Tribe has opposed for fifteen years. But we have struggled to understand and to be fair, and as I said before, we are firmly committed to the settlement process which we believe should continue no matter what happens here today and at the Senate hearings yesterday.

Here is where we are at. The Tribal Council desperately wants to support a bill that will promote and encourage an overall settlement. It would be better not to have any law at all at this stage rather than one which will present obstacles to achieving a fair and workable settlement. We want to bring lasting peace to our area and to put an end to the clouds, uncertainties and lawsuits that have plagued us for so long. The last thing we need is another law that results in more confusion and uncertainty and winds up causing more lawsuits.

The Tribal Council believes that S. 1558 as currently drafted contains several serious and fatal flaws which will make it more difficult to achieve our goals. The Council has expressed its support for another version of the settlement legislation which we refer to as the August 20, 1985 Draft. I am providing the Committee with a copy of the Tribal Council's Resolution, No. 81-85, which sets forth our position. I have asked our tribal attorney, Mr. Michael Thorp, to describe the differences between

S. 1558 and the August 20 Draft and to explain the reasons why we prefer the August 20 Draft.

I want to emphasize though that the bill or the law is only a means to an end. Even if it is enacted, it will not accomplish anything by itself. The Council wants a bill that will encourage all of the interested parties to reach the necessary agreements, not one that will make it more difficult to agree and eventually will spawn new litigation to take the place of the cases we are trying to settle.

This past week, the Council received a petition signed by more than one-third of the Tribe's eligible voters calling for a tribal referendum vote on the proposed settlement legislation. Under Article VIII of our Tribal Constitution, one third of our members can call for such an election and its results are conclusive and binding on the Tribal Council. The Council plans to hold informational and educational meetings in the three major communities within the Reservation and then to schedule a vote of the people. Naturally, we will inform this Committee of the results of our democratic process. Needless to say, this subject is a matter of intense interest and concern to all of our tribal members.

Thank you very much for the opportunity of appearing before you today.

PREPARED STATEMENT OF

MICHAEL R. THORP

ATTORNEY FOR THE PYRAMID LAKE
PAIUTE TRIBE OF INDIANS

ON

THE PYRAMID LAKE PAIUTE AND
TRUCKEE RIVER SETTLEMENT ACT OF 1985

S. 1558 (99TH CONG. 1st SESS.)

BEFORE THE SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES

October 21, 1985

I am Michael R. Thorp, Tribal Attorney of the Pyramid Lake Paiute Tribe of Indians. It is a privilege to be here today to present to this Committee the views of the Pyramid Lake Paiute Tribe on the proposed Pyramid Lake Paiute and Truckee River Settlement Act of 1985. This proposed legislation is of vital concern to the Pyramid Lake Tribe and the Tribal Council has authorized Chairman Shaw and myself to present the views of the Tribal Council to the Congress. My focus will be on the outstanding issues regarding the proposed legislation which remain in dispute.

On August 20, 1985, the Nevada parties, including the Tribe, the State of Nevada, the Truckee-Carson Irrigation District, the Carson-Truckee Water Conservancy District and the Sierra Pacific Power Company, met in Reno to discuss possible changes to the proposed legislation. I have attended Pyramid Lake settlement sessions for many years, and that was by far the best. All of the parties were sincerely interested in achieving an overall settlement and in improving the proposed legislation so that it would do everything possible to promote an overall negotiated resolution, would not present any unnecessary obstacles to settlement, and would not create uncertainties that could or would give rise to future litigation.

At the August 20 meeting, the Nevada parties reached tentative agreement on numerous changes to S. 1558. Those changes are incorporated in the August 20, 1985 Draft Bill, Attachment A to my prepared testimony, and are described and explained in

Attachment B to my prepared testimony. Many of the changes described in Attachment B are technical corrections or clarifications. All of them are relatively non-controversial and either have been or probably will be agreed upon by the Nevada negotiating parties. Consequently, I will not discuss them further in my oral testimony although I will, of course, be glad to respond to your questions.

1. The first outstanding or unresolved issue concerns ownership of the bed of Pyramid Lake and the Truckee River within the exterior boundaries of the Pyramid Lake Reservation. The Pyramid Lake Reservation was created in 1859. In 1976, for the first time, the State of Nevada laid claim to the bed of Pyramid Lake and the Truckee River by filing a lawsuit against the United States. That suit was dismissed by the District Court in 1977. The dismissal was affirmed by the Court of Appeals in 1980 and the Supreme Court denied review in 1981. The grounds for the dismissal were the government's immunity from suit and the running of the applicable 12 year federal statute of limitations.

Since 1981, tribal members and officials have been reminded from time to time by state officials that the State still claims that it owns the bed of Pyramid Lake and the Truckee River within the Reservation and that the State will keep pressing to vindicate that claim. Needless to say, this is a very critical issue to the Tribe since Pyramid Lake and the Truckee River are the very heart and soul of the Pyramid Lake Indian Reservation, the primary sources of the Tribe's livelihood and the spiritual centers of the Tribe's culture and heritage. The existence of the State's claim is a constant source of friction, annoyance and antagonism between the Tribe and the State.

The proposed settlement legislation and the agreements that are contemplated under the proposed bills are, of course, intended to end the long and often bitter controversy regarding Pyramid Lake and the Truckee River and to bring peace to the Indian and non-Indian communities in Northwestern Nevada. This worthy goal cannot be achieved so long as the State lays claim to the bed of Pyramid Lake and the Truckee River.

This is the background that lead the Tribal Council to propose Section 107(a)(8) of the August 20, 1985 Draft Bill. That provision would require the State to relinquish any claim it may have to the bed of Pyramid Lake and the Truckee River within the Pyramid Lake Reservation as part of an overall comprehensive settlement. Section 107(a)(8) is not self-executing; the State's relinquishment would only have to occur when and if all other substantive agreements contemplated by the Bill were reached.

The bottom line for the Tribal Council is that lasting peace and a cooperative partnership are not possible if the State's claim to the bed of Pyramid Lake and the Truckee River remains resolved. The Tribe is not willing to negotiate solutions to all of the other outstanding water and fishery related disputes only to be met with, and then have to relitigate, the State of Nevada's claim that it owns Pyramid Lake. For that reason, the

Tribal Council opposes enactment of any bill that does not include a provision along the lines of Section 107(a)(8) of the August 20, 1935 Draft Bill.

2. Subsection 108(c) authorizes an appropriation to the settlement fund of the sum of $21 million as the federal contribution to this settlement. The Pyramid Lake Tribe maintained from the outset of the negotiations that a federal contribution of $21 million would be completely inadequate to carry out the terms of this settlement. To date, however, the federal government, through the Department of the Interior, has refused to consider any sum in excess of $21 million.

In order for the settlement provided for in the proposed legislation to be effectuated, a number of projects and programs designed to enhance the Pyramid Lake Fishery and to provide for water conservation must be implemented. Some of those programs and their estimated costs are as follows:

a. A program designed to facilitate and maintain physical restoration of the Lower Truckee River. This program is estimated to cost approximately $13 million.

b. Modification and/or replacement of the fishway and fish facilities at Marble Bluff Dam. This program is estimated to cost approximately $10 million.

c. A program for the rehabilitation, betterment and operational improvement of the Newlands Reclamation Project. This program is estimated to cost $16 million.

d. Depending upon the savings generated by the other projects, it will probably be necessary to purchase some existing water rights and either retire those water rights or transfer those rights to Pyramid Lake. A reserve of at

> least $12 million should be maintained in the settlement fund for this purpose and for other contingencies.

The total cost of these programs is approximately $52 million. With a contribution from the State of Nevada of $8 million, this still requires that a minimum of $43 million be appropriated for the settlement fund in order to effectuate the purposes of this legislation. Therefore, the $21 million figure contained in Section 108(c) should be changed to $43 million.

3. A related problem was raised at the special Tribal Council Meeting this past Friday, September 27, 1985. Under subsection 106(a)(2) of the proposed legislation, the Secretary of the Interior is obligated to continue to operate and maintain three ongoing programs for the benefit of Pyramid Lake's endangered and threatened fish, the Fish and Wildlife Service's Lahontan National Fish Hatchery, the tribal hatcheries on the Pyramid Lake Reservation, and the Marble Bluff Dam, fishway and fish facilities. The Tribe's understanding throughout the negotiations on the proposed bill was that the Settlement Fund established pursuant to Section 108 would be used to fund additional programs for the benefit of the fishery including the ones I previously discussed.

Upon reviewing the bill again last Friday night, the Tribal Council discovered that the only limitation on the use of the Section 108 Settlement Fund is that the funds "be used to carry out the purposes provided in this title." It therefore appears that the Settlement Fund could, and perhaps would be used to continue to operate and maintain the three ongoing programs described in subsection 106(a)(2). That would be contrary to the Tribe's understanding of the intent of the proposed legislation which is to insure continuation of the three ongoing programs and, in addition, to provide federal funding for the other fish enhancement efforts authorized in the bill that eventually are selected by the Secretary. If the Settlement Fund is used to provide funding for the three ongoing programs, the entire settlement effort will collapse because there will not be any money to carry out the other programs contemplated in the Act.

To correct this problem, the Tribal Council recommends that subsection 106(a)(2) be amended to read as follows:

> Section 106(a). In addition to the obligations referred to in Section 104, the Secretary shall...
>
> (2) continue to operate and maintain with funds other than those authorized in Sections 108 and 109 ...

The Tribal Council's proposed change is underlined.

The Tribal Council has instructed me to inform the Committee that this matter is extremely important and that the Tribal Council will not support enactment of the proposed legislation unless it is made clear that the funds needed to carry out the Secretary's obligations pursuant to Section 106(a)(2) will not come from either the Section 108 Settlement Fund or the Section 109 Tribal Trust Fund. As I said before, I believe that the Tribe's proposed amendment reflects the intent of the negotiating parties, principally the Tribe and the Interior Department.

4. Title II -- Consent and Approval of the California-Nevada Interstate Compact.

The Pyramid Lake Tribe strongly opposes Congressional approval of the California-Nevada Interstate Compact and any connection between the Compact and the settlement legislation for several reasons.

First, the negotiations between the States of Nevada and California over the California-Nevada Interstate Compact took place over approximately 20 years. During that time, the Pyramid Lake Tribe was not represented in any way in the negotiations. The Pyramid Lake Tribe did not participate in the negotiations, was not allowed to have meaningful input into the negotiations, and did not, in any way, approve the Compact which was finally ratified by the Legislatures of California and Nevada. The federal government did have one representative at the negotiations, but that representative did not purport to represent the Tribe or the views of the Tribe.

In fact, a major assumption of the federal government and the Tribe during the Compact negotiations was that any Compact approved by California and Nevada would not be binding upon the United States or any affected Indian Tribes. This had been the consistent pattern established by previous interstate water compacts which uniformly provided that they were not binding upon the United States and its wards whenever Indian water rights could have been affected. See, e.g., Act of August 30, 1957, Pub. L. No. 85-222, Art. 10, 71 Stat. 497, 505 (Klamath River Basin Compact); Act of November 7, 1977, Pub. L. No. 89-789, Art. 13, 80

Stat. 1405, 1414 (Arkansas River Basin Compact). This consistent treatment of all previous interstate compacts is not surprising since the purpose of the interstate compact clause is to provide for resolution of disputes between states, not between the states and Indian tribes.

Contrary to the expectations of both the federal government and the Pyramid Lake Tribe, the California-Nevada Interstate Compact, in Article XXII, expressly provides that Congress must agree to make the principal provisions of the Compact binding upon the United States and its wards, including Indian Tribes.

Thus, the California-Nevada Interstate Compact was negotiated without the Pyramid Lake Tribe's involvement and with the tacit understanding that the terms of the Compact would not be binding upon the Tribe. The Compact presented for ratification to Congress, however, requires that it be made binding upon the Tribe. This result is not only unjust in that provisions of the Compact, as demonstrated below, may very well defeat the efforts of the United States and the Tribe to save Pyramid Lake and restore the magnificant Pyramid Lake fishery, but is also a violation of the basic tenet of federal Indian policy that tribes must have an effective voice in governmental decisions which affect them.

Second, the provisions of the California-Nevada Interstate Compact are obsolete. Since the proposed Compact was ratified by California in 1970 and by Nevada in 1971, a number of events have occurred which alter the circumstances and assumptions upon which the Compact was based. For example, a final decree has been entered in the Carson River adjudication, United States v. Alpine Land and Reservoir Co., et al., No. D-183 (D. Nevada). Operating Criteria and procedures for the Newlands Reclamation Project were promulgated by the Department of the Interior in 1973 and subsequently were upheld by the United States District Court for the District of Nevada and the 9th Circuit Court of Appeals. Those criteria provide that the Carson River should be maximized for use on the Newlands Project, thereby minimizing the amount of water diverted from the Truckee River for the Project. This provision contrasts with the provisions of the proposed Compact dealing with the Carson River which, as shown below, gives Carson River water users the right to divert much more water than their decreed entitlement.

Moreover, the proposed Compact was negotiated prior to the enactment of both the National Environmental Policy Act, 42 U.S.C. §§4321 et seq., and the Endangered Species Act, 16 U.S.C. §§1531 et seq. Pyramid Lake's endangered and threatened species are adversely affected by the proposed Compact, and the Compact makes no effort to conserve those fish in accordance with the national policies established by Congress in the 1973 Endangered Species Act. Finally, the Department of the Interior completed construction of Stampede Reservoir in 1976 and the United States District Court for the District of Nevada and the 9th Circuit Court of Appeals have held that it should be used exclusively for the benefit of the Pyramid Lake Fishery until the Lahontan cutthroat trout and cui-ui either are no longer listed as endangered or threatened species or receive sufficient water for their conservation from other sources. This decision also directly conflicts with provisions of the Compact.

For these reasons as well as others that have nothing to do with Pyramid Lake, the executive branch of the federal government consistently has opposed congressional ratification since the proposed Compact was first proposed in 1971.

Attachment C to my prepared testimony contains the Pyramid Lake Tribe's detailed comments on the specific provisions of the proposed Compact which affect the Tribe's interests.

The Pyramid Lake Tribe's preference would be to separate the proposed Compact from the proposed settlement legislation. The Pyramid Lake-Truckee River conflicts are difficult enough to resolve on their own without injecting the other complex issues raised by the proposed Compact such as the Walker River and Carson River allocations. But Nevada has insisted on Congressional ratification of the proposed Compact as part of the overall settlement. Section 204 of the August 20, 1985 Draft Bill was proposed by the Tribe as a compromise to bridge that gap between the Tribe and the State.

As I previously stated, the proposed Compact adversely affects the interests of the Pyramid Lake Tribe in various ways. For example, in pending lawsuits, the Pyramid Lake Tribe is claiming all of the currently unappropriated water of the Truckee River system against both California and Nevada. The Tribe and the federal government have also established through the courts that Stampede Reservoir must be operated for the benefit of the Pyramid Lake fishery. Among other things, the proposed Compact would deprive the Tribe of its claim to the unappropriated water in California and arguably would take away a major portion of the yield and capacity of Stampede Reservoir.

Section 204 of the August 20, 1985 Draft Bill would protect the Tribe against the harmful effects of the Compact by providing, in essence, that Title 1 of the Pyramid Lake Settlement Act and the voluntary agreements contemplated and entered into pursuant to Title 1 would take precedence over anything to the contrary in the Compact. Thus, for example, if Title 1 agreements were reached under which California gave up some or all of its Compact allocations to unappropriated water and/or to Stampede Reservoir, the Compact would not and could not be used to prevent their implementation.

In the absence of proposed Section 204, the Tribe's position in the forthcoming negotiations on the agreements to carry out Title 1 of the proposed settlement legislation would be substantially impaired. The Tribe would either have to accept the proposed Compact in its entirety and give up some of its claims and legal victories without getting anything in return, or else assume the risk that the Title 1 agreements ultimately will withstand a legal challenge based on their alleged inconsistency with the Compact. Obviously, no one will want to enter into agreements whose validity is suspect. Indeed, it would be contrary to the fundamental purpose of the proposed settlement legislation to knowingly cast a cloud over, and invite litigation concerning, the validity of the essential Title 1 agreements.

The potential inconsistency between the proposed Compact and the contemplated Title 1 agreements is a crucial matter that must be addressed in the proposed settlement legislation. If ratification of the Compact is to be included in the settlement legislation, the Pyramid Lake Tribe respectfully requests the inclusion of a provision to insure that the Compact will not be used to prevent the implementation of the contemplated Title 1 agreements.

The Pyramid Lake Tribal Council is committed to doing everything possible to secure a just and reasonable settlement of the longstanding controversy that has plagued northwestern Nevada. The Tribe believes that the August 20, 1985 Draft Bill, to which all the concerned Nevada parties tentatively agreed, is a suitable vehicle for achieving that settlement. The Tribal Council's opposition to any bills that do not include sections 107(a)(8) and 204 of the August 20, 1985 Draft is predicated on its sincere belief, reached after careful and lengthy discussion and deliberation, that an overall settlement cannot be achieved unless the State of Nevada ultimately is willing to relinquish its claim to the bed of Pyramid Lake and the Truckee River within the Reservation and to agree that the Compact will not prevent the implementation of any of the voluntary agreements that are reached pursuant to Title 1 of the proposed settlement legislation. In the absence of these two crucial provisions, any settlement of the existing litigation that is reached, would just create new uncertainties and invite new litigation.

The Tribal Council also urges the Committee to insure adequate funding to implement the proposed settlement. It would be terribly tragic and unfortunate if agreement finally is reached to resolve a century of conflict and litigation only to have the settlement fall apart and the fish become extinct because the essential fish recovery and enhancement program cannot be implemented.

Thank you for the opportunity of presenting this testimony.

AUGUST 20, 1985 DRAFT

ATTACHMENT A
TO
PREPARED STATEMENT OF
MICHAEL R. THORP
ATTORNEY FOR THE PYRAMID LAKE PAIUTE TRIBE OF INDIANS
ON
S. 1558 (99TH CONG. 1ST SESS.)
BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

October 21, 1985

August 20, 1985

99th Congress
1st Session

IN THE SENATE OF THE UNITED STATES

Mr. Laxalt (for himself and Mr. Hecht) Introduces the following Bill; which was read twice and referred to the Committee on ____
____

A BILL

To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pyramid Lake Paiute and Truckee River Settlement Act of 1985".

TITLE I--TRUCKEE RIVER SETTLEMENT

Sec. 101. For the purposes of this title, the Congress finds that --

(1) Pyramid Lake, a desert lake into which the Truckee River flows and which has no outflow, is an important natural resource which is situated within the Pyramid Lake Indian Reservation;

(2) the fish resources of Pyramid Lake include the Lahontan cutthroat trout and the cui-ui, which are listed in 50 CFR 17.11(h) and which have been designated by the Secretary of the Interior as threatened and endangered species, respectively;

(3) rights to the waters and flows of the Truckee River are the subject of existing and prospective lawsuits involving numerous parties in Nevada, including among others the Pyramid Lake Paiute Tribe, major agricultural interests, water districts and the cities of Reno and Sparks and Washoe County, Nevada;

(4) although some of these lawsuits have resulted in decisions by the Ninth Circuit Court of Appeals and the United States Supreme Court, such decisions have not yet resolved all controversies among the parties; and, unless pending litigation is settled, there will continue to be proceedings in the courts;

(5) these lawsuits not only will prove expensive and time consuming for all participants but also could have a profoundly adverse impact upon all the parties and the economies of Nevada;

(6) The parties to the lawsuits have diligently attempted to settle these claims and have stated to the relevant committees of the Senate and the House of Representatives their interest in settling the controversies and litigation surrounding the various claims affecting the Truckee River, Pyramid Lake and its fish resources, and Stampede Reservoir;

(7) it is the long-term interest of the United States, the State of Nevada and its political subdivisions, the State of California, the Pyramid Lake Paiute Tribe, and other communities of Nevada that the United States and the State of Nevada provide a stimulus for and assist in the

implementation of a permanent settlement of such litigation; and

(8) to the extent a settlement is facilitated by this title, settlement will--

(A) permit expensive and lengthy litigation to be resolved by mutual agreement of the parties and in a manner which accommodates to the extent possible the needs of all parties;

(B) enhance the Lahontan cutthroat trout and the cui-ui and their habitat;

(C) assist the economic development of the Pyramid Lake Paiute Tribe; and

(D) provide needed municipal and industrial water for use in the cities of Reno and Sparks and Washoe County, Nevada.

DEFINITIONS

Sec. 102. As used in this title--

(1) the term "Tribe" means the Pyramid Lake Paiute Tribe which is organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476):

(2) the term "Secretary" means the Secretary of the Interior;

(3) the term "Newlands Project" means the project authorized pursuant to the Reclamation Act of June 17, 1902 (43 U.S.C. 371, et seq.) for reclamation and irrigation of land in the Carson and Truckee River basins;

(4) the term "Washoe Project" means the Reclamation Project authorized pursuant to the Act of August 1, 1956 (43

U.S.C. 614);

(5) the term "Lower Truckee River" means that portion of the Truckee River below Derby Dam;

(6) the term "Pyramid Lake fish resources" means the Lahontan cutthroat trout and the cui-ui;

(7) the terms "enhancement" and "enhance" mean measures and the taking of measures, including natural and hatchery propagation and habitat improvement, necessary and appropriate to improve the biological status of the Pyramid Lake fish resources;

(8) the term "replacement cost" means the sum of $37.00 per acre foot during the year immediately following the date upon which the Secretary certifies that the conditions of section 107(a) have been satisfied. On each anniversary date thereafter the replacement cost shall be adjusted to reflect the percentage increase which took place the previous year in the metered rate for commercial water service charged by the entity serving the cities of Reno and Sparks, Nevada; and

(9) the term "water year" means the period commencing on October 1 of any year and ending on September 30 the following year.

EFFECT ON EXISTING RIGHTS AND AUTHORITIES

Sec. 103. (a) Nothing in this Act shall be construed as--

(1) modifying or terminating any court decree, except as provided by the provisions in subsections (b) through (h) of section 105 and section 111, including those decrees entered in the following cases:

(A) United States v. Alpine Land & Reservoir Co., Civ. No. D-183 BRT (D. Nev.);

(B) United States v. Orr Water Ditch Co., Equity No. A-3 (D. Nev.); and

(C) United States v. Truckee River General Electric Company, Civ. No. 14861 in the United States District Court for the Northern District of California (now Civ. No. S-643-LKK in the Eastern District in California), as modified by the Truckee River Agreement incorporated in and made a part of the final decree in, United States v. Orr Water Ditch Co., Equity No. A-3, in the United States District Court for the District of Nevada;

(2) diminishing or impairing any property right existing on the effective date of this title; and

(3) providing any Congressional directive binding on the State Engineer of Nevada.

(b) Nothing in this title shall be construed as prohibiting the modification or termination of any court decree upon agreement of the parties to such court decree.

WATER DELIVERIES

Sec. 104. The Secretary shall, acting through the Bureau of Reclamation, deliver annually such quantities of water to the Pyramid Lake Indian Reservation as may be necessary for the maintenance and enhancement of the Pyramid Lake fish resources, wildlife conservation, outdoor recreation, environmental quality, economic development, and other purposes. The Secretary shall be deemed to have satisfied fully this obligation only if--

(1) for the first ten-year period commencing October 1,

1978, and for each succeeding ten-year period commencing one year after the beginning of the preceding ten-year period, the average elevation of Pyramid Lake measured at the end of each water year is not less than 3,794 feet above mean sea level; and

(2) at the end of the first two-year period beginning October 1, 1988, and each succeeding two-year period the elevation of Pyramid Lake is not less than 3,786 feet above mean sea level.

WATER MANAGEMENT

Sec. 105. (a) The Secretary shall take actions as are necessary to meet his obligations under this title. In carrying out such obligations, and notwithstanding any other provision of law, the Secretary may--

(1) acquire by purchase, but not by eminent domain, private lands or interests having water rights;

(2) enter into water exchange agreements with any individual or legal entity;

(3) enter into agreements with Truckee-Carson Irrigation District for rehabilitation, betterment and operational improvement of the Newlands Project, including the T canal pilot lining project, which shall include a component for the improvement of the Stillwater Wildlife Management Area and the Carson Lake Pasture to the extent such improvement is necessary to mitigate fully the effects of such rehabilitation, betterment and operational improvement. ~~To the extent~~ such mitigation shall not require the expenditure of funds from the settlement fund created in section 108 of this title, ~~such~~

~~expenditure shall be subject to the approval of the Tribe~~;

(4) enter into such other agreements as may be necessary;

(5) conduct weather modification programs and other programs to augment the flows of the Truckee and Carson Rivers;

(6) allocate costs of the Washoe Project to development of fish and wildlife resources on a nonreimbursable basis notwithstanding the limitation on expenditures imposed by section 4 of the Washoe Project Act (43 U.S.C. 614c) or any other provision of law; and

(7) after consultation with the Administrator of the Western Area Power Administration, withdraw from commercial sale all or any portion of the Washoe Project power for any person or entity who becomes a party to the agreements referred to in section 107(a)(6) if, after such consultation, the Secretary determines that such energy is necessary to offset losses associated with the Truckee River hydroelectric powerplants of such person or entity.

(b) Notwithstanding any other provision of law and subject to agreement of the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, the Secretary shall execute a perpetual contract for the sale of water from Stampede Reservoir in the quantity set forth in sections 105(c) and 105(d) for municipal and industrial use in the cities of Reno and Sparks and Washoe County, Nevada.

(c) Upon execution of the contract and for ten years thereafter, Carson-Truckee Water Conservancy District shall be provided a dry period municipal and industrial supply based on an average annual withdrawal from Stampede storage of 6,000 acre feet or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District. To protect the municipal and industrial supply, when Stampede Reservoir storage is at or below 50,000 acre feet, or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, there shall be no releases from Stampede Reservoir made for fishery purposes to the Lower Truckee River.

(d)(1) After the ten years provided in subsection (c) and based upon a projected demand buildup period to be defined by the Secretary, Tribe, Sierra Pacific Power Company and the Carson-Truckee Water Conservancy District, the Carson-Truckee Water Conservancy District shall have the right to withdraw from Stampede Reservoir storage for municipal and industrial purposes, an average of 5,000 acre feet per year or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

(2) The Carson-Truckee Water Conservancy District shall be provided a dry period municipal and industrial supply based on the average annual withdrawal from Stampede Reservoir storage of 15,000 acre feet, or such other amount as agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

(3) To protect the municipal and industrial supply, when Stampede Reservoir storage is at or below 120,000 acre feet or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water

Conservancy District there shall be no releases from Stampede Reservoir made for fishery purposes to the Lower Truckee River.

(e) Notwithstanding any other provision of law, the Secretary shall execute a perpetual contract for the sale of such water in addition to the water referred to in subsections (b) through (d) of section 105 to the Carson-Truckee Water Conservancy District from Stampede Reservoir to the extent such water is not required for the Pyramid Lake fish resources.

(f) The allocation of project costs made to municipal and industrial water supply under subsections (b) through (e) of section 105 shall be repayable to the United States in 50 years from the date the conditions of section 107 of this title have been met, under the provisions of the Federal reclamation laws, with right of prepayment, and provided further, that repayment of costs allocated to municipal and industrial water supply shall include interest on the unamortized balance of such allocations at a rate equal to the average rate (which rate shall be certified by the Secretary of the Treasury) paid by the United States on its marketable long term securities outstanding on the date of enactment of the Washoe Project Act (43 U.S.C. 614) and adjusted to the nearest one-eighth of 1 per centum.

(g) In addition, and subject to the agreement of the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, Sierra Pacific Power Company shall have the right to accumulate Privately Owned Stored Water, as defined in the Truckee River Agreement, in Stampede Reservoir to the extent storage is available. Such waters shall be allocated their proportionate share of evaporation loss and in the event water is required to be spilled from Stampede Reservoir such privately owned stored water shall be spilled prior to any Federal water stored in said reservoir.

(h) The water sold under the provisions of subsections (b) through (g) of section 105 shall not be used for the purpose of dilution of sewage effluent; however nothing herein shall be construed to preclude the use of other water stored in Stampede Reservoir for such dilution purposes.

(i) If any of the lands or interests therein acquired under this title have appurtenant Newlands Project water rights or if any of the agreements entered into under this title provide for the transfer of Newlands Project water rights to non-Newlands Project lands or uses, the Secretary shall each year pay the Truckee-Carson Irrigation District from the funds referred to in section 108(b)(2) or from other funds all operation, maintenance, and other charges that would have been assessed if the acquisition or transfer had not occurred.

(j) The Secretary shall make payments to the State of Nevada and its political subdivisions each year from the funds referred to in section 108(b)(2) or from other funds in lieu of real property taxes or other assessments that would have otherwise been assessed with respect to lands and interests in lands acquired pursuant to this title.

(k) Notwithstanding any other provisions of law, the Secretary is authorized to file applications for permits to change the point of diversion, place, means, manner, or purpose of use of any water which the Secretary may acquire under this title.

(l) The authority of the Secretary provided in this section shall not be construed to preclude the existence of that authority under other provisions of law."

FISH PROPAGATION

Sec. 106. (a) In addition to the obligations referred to in section 104, the Secretary shall--

(1) within three years after the date upon which the conditions of section 107 of this title have been met, formulate and commence a fish enhancement program to--

(A) provide such measures as are necessary to recover the Lahontan cutthroat trout and cui-ui of Pyramid Lake to the point at which they are no longer classified as "endangered" or "threatened" pursuant to the Endangered Species Act (16 U.S.C. 1531, et seq.); and

(B) restore to the maximum extent practicable natural spawning of the Lahontan cutthroat trout and cui-ui in the Lower Truckee River; and

(2) continue to operate and maintain--

(A) the Lahontan National Fish Hatchery or any appropriate replacement fish hatchery facilities;

(B) fish hatchery facilities and improvements thereto situated on the Pyramid Lake Indian Reservation, the construction of which was or is federally supported; and

(C) the fishway and fish facilities at Marble Bluff Dam.

(b) The fish enhancement program provided in subsection (a)(1) shall consist of one or more of the following programs and shall be designed to enhance the Pyramid Lake fish resources in the most cost-effective manner:

(1) a program designed to facilitate and maintain physical restoration of the Lower Truckee River;

(2) modification and/or replacement of the fishway and fish facilities at Marble Bluff Dam;

(3) construction of additional fish hatcheries and improvements to existing hatcheries on the Pyramid Lake Indian Reservation;

(4) within the Pyramid Lake Indian Reservation, such other programs as may be agreed upon by the Tribe and the Secretary; and

(5) outside the Pyramid Lake Indian Reservation, such other programs as may be agreed upon by the Secretary, the Tribe, the State of Nevada, and other affected parties.

(c) Nothing in this title shall be a limitation on spending authority under the Act of November 2, 1921 (25 U.S.C. 13) or any other Act of Congress.

(d) For the purposes of subsection 106(a)(2)(B), a hatchery is federally supported if moneys appropriated by Congress were or are used to pay, in whole or in part, for its construction.

(e) The Secretary shall undertake such biological studies as are agreed to by the Tribe to determine the flow requirements in the Lower Truckee River for the Pyramid Lake fish resources.

EFFECTIVE DATES

Sec. 107. (a) The provisions of sections 104, 105, 106, 110, and 111 of this title and title II of this Act shall not take effect until--

(1) Sierra Pacific Power Company, Washoe County, the Tribe and the Secretary have executed an agreement providing for the withdrawal, modification or other appropriate disposition of the water rights requested under Application Nos. 47047, 47121, 47209, and 47264 pending before the State Engineer of Nevada for permits to appropriate waters of the Truckee River;

(2) the State Engineer of Nevada approves, subject to the provisions of the agreement referred to in subsection (a)(1), the applications of the Tribe, Nos. 48061, and 48494, for permits to appropriate waters of the Truckee River;

(3) the State of Nevada agrees to contribute the amount referred to in section 108(b)(1);

(4) the following actions or proceedings are dismissed with prejudice or otherwise finally concluded in accordance with the agreement of the parties thereto:

(A) Pyramid Lake Paiute Tribe v. California, Civ. S-81-378-RAR, United States District Court, Eastern District of California;

(B) United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada, including those matters asserted in the Tribe's proposed amended complaint;

(C) the Tribe's appeal in United States v. Orr Water Ditch Co., No. 85-1880, Ninth Circuit Court of Appeals;

(D) the Tribe's and the Secretary's appeals from the State Engineer's ruling in United States v. Orr

Water Ditch Co., Equity A-3-WEC, United States District Court, District of Nevada, and United States v. Alpine Land & Reservoir Co., D-183-BRT, in the United States District Court for the District of Nevada, granting the applications to transfer Newlands Project water rights to other Newlands Project lands;

(E) Pyramid Lake Paiute Tribe of Indians v. Hodel, No. R-85-197-BRT, United States District Court for the District of Nevada; provided, however, that any final disposition of this action other than a dismissal with prejudice shall require the agreement of the Truckee-Carson Irrigation District; and

(F) Truckee-Carson Irrigation District v. United States, No. 512-7 (Ct. Cl.);

(5) the operating criteria has been agreed upon, adopted and approved as provided in section 111;

(6) Sierra Pacific Power Company, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe, and the Secretary have executed an agreement (and, if necessary, obtained ratification of such agreement from a court of competent jurisdiction) providing for utilization of available reservoir storage to best effectuate the Secretary's obligations under subsections (b), (c), (d), and (g) of section 105 and section 106(a)(1);

(7) all pending motions filed by the Tribe in Doc. No. E-9530 before the Federal Energy Regulatory Commission, have been withdrawn; and

(8) The state of Nevada relinquishes any claim it may have to title to or ownership of the bed of Pyramid Lake and the bed of the Truckee River within the exterior boundary of the Pyramid Lake Indian Reservation.

(b)(1) Subject to the provisions of paragraph (2) and except as provided in section 108(g) and section 109(e), all the conditions of section 107(a) shall be accomplished within one year from the date of the enactment of this title or this Act shall terminate and shall be of no further force or effect.

(2) Upon the agreement of the Secretary and the Director of the Nevada Department of Conservation and Natural Resources the time limit provided in paragraph (1) may be extended for a period not to exceed six months.

SETTLEMENT FUND

Sec. 108. (a) There is hereby established in the Treasury of the United States a fund, to be known as the "Pyramid Lake Settlement Fund", to be used to carry out the purposes provided in this title.

(b) The settlement fund shall consist of--

(1) $8,000,000 to be contributed by the State of Nevada;

(2) amounts to be appropriated to the settlement fund; and

(3) interest accruing to the settlement fund pursuant to subsection (e).

(c) There is hereby authorized to be appropriated to the settlement fund the sum of $21,000,000. Funds appropriated pursuant to this section shall remain available until expended.

(d) The source of any moneys expended from the settlement fund shall be deemed to be one-half from the amount contributed to the settlement fund by the State of Nevada and one-half from funds appropriated pursuant to subsection (c) until an aggregate of $16,000,000 shall have been expended. All moneys expended in excess of $16,000,000 shall be deemed to be Federal funds.

(e) Such portion of the settlement fund as the Secretary determines is not required to meet current withdrawals shall be invested by the Secretary of the Treasury at the request of the Secretary in public debt securities of the United States with maturities suitable to the needs of the settlement fund, as determined by the yields on outstanding marketable obligations of the United States of comparable maturities.

(f) In the event the Secretary fails to obligate the sum of $16,000,000 to implement the fish enhancement program required by section 106(a)(1) within five years after the date upon which the conditions of section 107 have been met, or within such additional period as may be agreed upon by the Secretary and the Tribe, the amount representing the difference between $16,000,000 and the amount obligated, together with the interest thereon, shall be paid and credited to the Tribal Trust Fund established by section 109 of this title.

(g) None of the moneys referred to in this section may be expended until the conditions of section 107 have been met. In the event these conditions are not met, the moneys referred to in subsection 108(b)(1) together with any interest earned thereon shall be returned to the State of Nevada and any moneys referred to in subsection (c) together with any interest thereon shall be deposited in the Treasury of the United States as miscellaneous receipts.

TRIBAL TRUST FUND

Sec. 109. (a) There is hereby authorized to be appropriated the sum of $10,000,000 to be deposited in the Treasury of the United States in a fund to be known as the "Pyramid Lake Paiute Tribe Trust Fund". Such sum shall be held in trust for the Tribe, invested in interest-bearing deposits and securities, including securities of the United States, and expended as specified in this section.

(b) There shall be added to the tribal trust fund any amounts credited to the tribal trust fund under section 108(f). Until such time as the Lahontan cutthroat trout and the cui-ui shall no longer be listed as having been designated as either a threatened species or an endangered species, any moneys credited to the tribal trust fund pursuant to section 108(f) and any income earned thereon shall be expended only for the purpose of enhancing the Pyramid Lake fish resources in accordance with a plan approved by the Secretary.

(c) Except as provided in subsection (b) with respect to the amounts credited to the tribal trust fund under section 108(f), principal and income from the tribal trust fund may be used for capital expenditures relating to the economic development of the Pyramid Lake Indian Reservation. Income from the tribal trust fund may be used for operating expenses associated with economic development of the Tribe or tribal administrative purposes.

(d) The amount referred to in section 109(a) shall bear interest from the date of the enactment of this Act.

(e) None of the moneys referred to in this section may be expended unless and until the conditions of section 107 have been met. In the event such conditions are not met, the moneys referred to in this section shall be deposited in the Treasury of the United States as miscellaneous receipts.

DAMAGES

Sec. 110. (a) Subject to the conditions provided in subsection (b), the Secretary shall, in the event the Secretary fails to meet the obligations in section 104, pay damages to the governing body of the Tribe in an amount equal to the replacement cost of such quantities of water as are necessary to meet those obligations or such lesser amount as may be agreed to by the Tribe.

(b)(1) The United States shall have no right to recover any portion of such damages from any person or entity, and the provisions of this section shall constitute the exclusive remedy of the Tribe for the failure to maintain the Lake levels as provided in section 104.

(2) The damages provided for in this section shall not exceed in any one year the sum of $5,000,000 for damages for the failure to meet the requirements of section 104(a) and the sum of $2,000,000 for damages for the failure to meet the requirements of section 104(b) or such lesser amount as may be agreed to by the governing body of the Tribe. Provided that beginning on October 1, 1989, and annually thereafter the sums set forth in this subsection shall be adjusted annually to reflect the increase in the consumer price index for the previous twelve month period.

THE NEWLANDS RECLAMATION PROJECT

Sec. 111. (a) Notwithstanding any other provision of law, all repayment obligations owing to the United States or one of its agencies by the Truckee-Carson Irrigation District shall be cancelled by the Secretary and the Secretary shall at the request of the District issue a certificate acknowledging that the lands in the District are free of the acreage and ownership and full cost pricing provisions of Federal Reclamation law provided that Truckee-Carson Irrigation District shall have the right to collect all unpaid construction costs. Such certificate shall be in a form suitable for entry in the land records of Churchill County and Lyon County, Nevada.

(b)(1) Truckee-Carson Irrigation District shall be responsible for the operation and control of the Newlands Project lands, works and rights subject to such reasonable rules and regulations as to repairs and maintenance of project facilities as the Secretary may adopt.

(2) Project operating criteria shall be agreed upon and adopted by the Secretary and Truckee-Carson Irrigation District, and approved by the Tribe and the State of Nevada. Project operating criteria shall be consistent with the provisions of the final decrees ~~that have been entered~~ in *United States of America* v. *Orr Water Ditch Co.*, and *United States* v. *Alpine Land & Reservoir Co.*, Nos. Equity A-3 and D-183 BRT in the United States District Court for the District of Nevada, and to the extent applicable to the Newlands Project, Nevada law.

OTHER STATUTES AFFECTED

Sec. 112. (a) All actions taken by the Secretary pursuant to sections 104, 105, 106, 107, and 111 of this title shall be exempt from the requirements of the National Environmental Policy

Act (42 U.S.C. 4321, et. seq.).

(b) ~~Subject to the provisions of paragraph (2),~~ Actions under sections 104, 105, 106, 107, and 111 shall be recognized and deemed to be in full compliance with the Endangered Species Act (16 U.S.C. 1531, et. seq.) with respect to the Pyramid Lake fish resources and may be taken without regard to the requirements of the Act.

(c) Nothing in this Act shall be deemed to prevent the seeking of further appropriations for the purpose of constructing or modifying facilities or structures to enhance the Pyramid Lake fish resources.

(d) Nothing in this Act shall be deemed to exempt the Secretary or any other Federal agency from the requirements of the National Environmental Policy Act or the Endangered Species Act with regard to other programs or actions.

APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

Sec. 113. The obligations of the Secretary to implement the fish enhancement program on the Pyramid Lake Reservation pursuant to section 106 shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450).

TITLE II--CONSENT AND APPROVAL OF CONGRESS TO THE CALIFORNIA-NEVADA INTERSTATE COMPACT

CONGRESSIONAL CONSENT

Sec. 201. The consent and approval of Congress is given to the California-Nevada Interstate Compact between the States of California and Nevada. Such compact reads as follows:

TEXT OF COMPACT INSERTED

Provisions Binding on The United States

~~RESERVATION OF RIGHTS~~

Sec. 202. The following provisions of the foregoing Compact shall be binding on the agencies, wards and instrumentalities of the United States of America:

Article V, Section D
Article V, Section F
Article VI, Subsection B.1
Article VI, Subsection B.3
Article VI, Subsection B.4
Article VI, Section D
Article VII, Section A
Article VII, Section B
Article VII, Section C
Article VII, Section D
Article VII, Section E
Article VIII, subsection A.4(b)
Article VIII, Subsection B.1
Article VIII, Subsection B.5

EFFECTIVE DATE

Sec. 203. The consent granted by this title shall take effect on the date the Secretary certifies that the conditions of section 107(a) of Title I have been satisfied.

EFFECT ON TITLE I

Sec. 204. Nothing contained in this title shall be construed to prevent the implementation of any agreements that are entered into or measures taken pursuant to Title I of this Act. The provisions of the Compact shall be construed in a manner that is consistent with the purposes of Title I of this Act.

PROPOSED CHANGES TO S. 1558

ATTACHMENT B

TO

PREPARED STATEMENT OF

MICHAEL R. THORP

ATTORNEY FOR THE PYRAMID LAKE
PAIUTE TRIBE OF INDIANS

ON

S. 1558 (99TH CONG. 1ST SESS.)

BEFORE THE SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES

October 21, 1985

On August 20, 1985, representatives of the Nevada negotiating parties met in Reno to discuss proposed changes to S. 1558. The meeting was attended by representatives of the Pyramid Lake Tribe, the State of Nevada, the Truckee-Carson Irrigation District, the Sierra Pacific Power Company and the Carson-Truckee Water Conservancy District. A representative of the Bureau of Reclamation was also present, but was not authorized to negotiate or to state the position of the federal government or the Interior Department.

Tentative agreement was reached on several changes to S. 1558 among the Nevada negotiating parties. (Those changes were communicated to the Interior Department, but we have not heard their response at the time this statement is written.) The main purpose of this attachment is to describe those changes for the benefit of the Committee. The changes are important since the Pyramid Lake Tribal Council has endorsed the August 20, 1985 Draft but opposed enactment of S. 1558 in its current form. While most of the changes have been agreed to by the Nevada negotiating parties, there are a few that the Tribe is proposing which differ from the language of the August 20, 1985 Draft. I will specify those proposed changes which have not been accepted by the other Nevada negotiating parties. A copy of the entire August 20, 1985 Draft is Attachment A to my testimony.

1. Section 102(8)

This definition should be revised to read as follows:

> The term "replacement cost" means the sum of $37.00 per acre foot during the year immediately following the date upon which the Secretary certifies that the conditions of Section 107(a)

> been satisfied. On each anniversary date thereafter the replacement cost shall be adjusted to reflect the percentage increase which took place the previous year in the metered rate for commercial water service charged by the entity serving the Cities of Reno and Sparks, Nevada.

The current definition of "replacement cost" in S. 1558 as "the then current municipal and industrial water rate charged to the Carson-Truckee Water Conservancy District by the Secretary pursuant to Section 105(b)" is far too indefinite. If this definition is used, the replacement cost could vary considerably depending upon the terms of any agreement which ultimately may be reached for the sale of M & I water from Stampede Reservoir. Since the definition of "replacement cost" is the key to the damage provision contained in Section 110 and thus, enforcement of the Secretary's obligation under Section 104, it is of paramount importance that the definition be as definite as possible.

The $37.00 figure was arrived at after extensive negotiation with the Department of the Interior and reflects a fair measure of damages in the event that the Secretary does not fulfill his obligations under Section 104. Since the settlement legislation will be permanent, it is imperative that any damage figure which is set be indexed to protect the Tribe against inflation. In this case, the damage figure has been indexed to reflect the percentage increase in the metered rate for commercial water service charged by the entity serving the Cities of Reno and Sparks, Nevada. In that way, the value of the water which is to be delivered to Pyramid Lake will be tied directly to the value of commercial water in the Northern Nevada area.

2. Section 102(10)

The definition of "dry period" should be deleted. The Tribe does not agree that a "dry period" is indicated when Lake Tahoe is at or below an elevation of 6225.25 feet. The definition of "dry period" should be left to agreement of the parties in connection with the reservoir management agreement required pursuant to Section 107(6). It is our understanding that Sierra Pacific Power Company, the entity which originally proposed this definition, is now agreeable to having the definition deleted from the legislation.

3. Section 103(a)

In the first line of this section the word "title" should be changed to "Act." In Section 103(a)(1), the phrase "subsections (b) and (c) of Section 105" should be changed to "subsections (b) through (h) of Section 105. These changes have previously been agreed to by all the parties to the settlement legislation.

4. Section 105(a)(3)

At the beginning of this subsection, the phrase "for rehabilitation and betterment" should be changed to "for rehabilitation, betterment and operational improvement." This change has been agreed to by all of the parties to the settlement legislation. The last portion of the last sentence of subsection 105(a)(3) should be revised to read "the effects of such rehabilitation, betterment and operational improvement." Following that sentence, the following sentence should be added: "Such mitigation shall not be funded from the settlement fund created in Section 108 of this title." The purpose of that addition is to insure that the settlement fund, which is already seriously deficient, is utilized, as intended, for the protection, recovery and enhancement of the Pyramid Lake fishery and is not diverted to other uses. Although this change differs from the language in the August 20, 1985 Draft, it accomplishes the same purpose from the Tribe's standpoint and I believe it will be acceptable to the the Tribal Council. I believe that the addition I am now proposing is preferred by the Truckee-Carson Irrigation District.

5. Section 105(a)(7)

The reference to Section 107(a)(10) should be changed to Section 107(a)(6).

6. Section 105(b)

The word "quantity" should be changed to "quantities" and the phrase "or such other quantities as are agreed to" should be added after "sections 105(c) and 105(d)." These changes are not included in the August 20, 1985 Draft, but are necessary to avoid ambiguities and to carry out the parties' intent. The phrase found at the end of this subsection "and not for the purpose of dilution of sewage effluent" should be deleted. This deletion has been agreed to by all of the parties to the settlement negotiations because the same subject is handled by adding a new Section 105(h).

7. Section 105(d)(1)

In this subsection, the reference to "parties" and the parentheses around "Secretary, Tribe, Sierra Pacific Power Company" should be deleted. After the first reference to Sierra Pacific Power Company, the term "and Carson-Truckee Water Conservancy District," should be added. This change has been agreed to by all of the parties to the settlement negotiations.

8. Section 105(d)(2)

The reference to "district" should be changed to "Carson-Truckee Water Conservancy District" for clarification.

9. Section 105(f)

The reference to "paragraphs (1) through (4) of subsection (b) of Section 105" should be changed to "subsections (b) through (e) of Section 105." This change has been agreed to by all of the parties to the settlement negotiations.

10. Section 105(g)

At the beginning of this subsection, the words "in addition, and" should be inserted. In addition, the term "privately owned stored water" should be capitalized and following the first reference to that term, the words "as defined in the Truckee River Agreement" should be added.

11. Subsection 105(h)

A new subsection 105(h) should be added to read as follows:

> The water sold under the provisions of subsections (b) through (g) of Section 105, shall not be used for the purpose of dilution of sewage effluent; however, nothing herein shall be construed to preclude the use of other waters stored in Stampede Reservoir for such dilution purposes.

This addition has previously been agreed to by all of the parties to the settlement negotiations.

Subsections 105(h) through (k) should then be renumbered as subsections 105(i) through (l).

New subsection 105(k) should be revised to change the term "application with the State Engineer of Nevada for a permit" to "applications for permits." This change has previously been agreed to by all of the parties to the settlement negotiations.

12. Section 106(e)

This subsection should be revised to read as follows:

> The Secretary shall undertake such biological studies as are agreed to by the Tribe to determine the flow requirements in the Lower Truckee River for the Pyramid Lake fish resources.

This change has previously been agreed to by all of the parties to the settlement negotiations.

13. Section 107(a)

This section, which is perhaps the key to the settlement legislation, needs extensive revision. The Pyramid Lake Tribe proposes that this section read as follows:

EFFECTIVE DATES

Section 107(a): The provisions of Sections 104, 105, 106, 110 and 111 of this Title and Title II of this Act shall not take effect until--

(1) Sierra Pacific Power Company, Washoe County, the Tribe and the Secretary have executed an agreement providing for the withdrawal, modification or other appropriate disposition of the water rights requested under Application Nos. 47047, 47121, 47209 and 47264 pending before the State Engineer of Nevada for permits to appropriate waters of the Truckee River;

(2) The State Engineer of Nevada approves, subject to the provisions of the agreement referred to in subsection (a)(1), the applications of the Tribe, Nos. 48061 and 48494, for permits to appropriate waters of the Truckee River;

(3) The State of Nevada agrees to contribute the amount referred to in Section 108(b)(1);

(4) The following actions or proceedings are dismissed with prejudice or otherwise finally concluded in accordance with the agreement of the parties thereto:

(A) Pyramid Lake Paiute Tribe v. California, Civ. S-81-378-RAR, United States District Court, Eastern District of California;

(B) United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada, including those matters asserted in the Tribe's proposed Amended Complaint:

(C) The Tribe's appeal in United States v. Orr Water Ditch Co., No. 85-1880, 9th Circuit Court of Appeals;

(D) The Tribe's and the Secretary's appeals from the State Engineer's ruling in United States v. Orr Water Ditch Co., Equity A-3-WEC, United States District Court, District of Nevada, and United States v. Alpine Land and Reservoir Co., D-183-BRT, United States District Court for the District of Nevada, granting the applications to transfer Newlands Project water rights to other Newlands Project lands;

(E) Pyramid Lake Paiute Tribe of Indians v. Hodel, No. R-85-197-BRT, United States District Court for the District of Nevada; provided, however, that any final disposition of this action other than a dismissal with prejudice shall require the agreement of the Truckee-Carson Irrigation District; and

(F) Truckee-Carson Irrigation District v. United States, No. 512-7 (Ct. Cl.);

(5) the operating criteria has been agreed upon, adopted and approved as provided in Section 111;

(6) Sierra Pacific Power Company, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe, and the Secretary have executed an agreement (and, if necessary, obtained ratification of such agreement from a court of competent jurisdiction, providing for utilization of available reservoir storage to best effectuate the Secretary's obligations under subsections (b), (c), (d) and (g) of Section 105 and Section 106(a)(1);

(7) All pending motions filed by the Tribe in Doc. No. E-9530 before the Federal Energy Regulatory Commission, have been withdrawn; and

(8) The State of Nevada relinquishes any claim it may to title to or ownership of the bed of Pyramid Lake and the bed of the Truckee River within the exterior boundary of the Pyramid Lake Indian Reservation.

All of the changes to subsection 107(a) as reflected above have been agreed to by all of the parties to the settlement negotiations except that the State of Nevada has refused to agree to subsection 107(a)(8). The disagreement on this subject between the Tribe and the State of Nevada is discussed in my Prepared Statement.

14. Subsection 107(b)(1)

The term "subsections (g) and (h) of Section 108" should be changed to "Section 108(g)." This change is for clarification and has been agreed to by all of the parties to the settlement negotiations.

15. Section 108(f)

The last portion of this subsection should be revised to read as follows: "The amount representing the difference between $16,000,000 and the amount obligated, together with the interest thereon, shall be paid and credited to the Tribal trust fund established by Section 109 of this title." This change is to clarify the subsection and has previously been agreed to by all of the parties to the settlement negotiations.

16. Section 110(b)(2)

The reference to Section 104(a) should be changed to Section 104(1) and the reference to Section 104(b) should be changed to Section 104(2).

A new sentence should be added at the end of this subsection to read as follows: "Provided that beginning on October 1, 1989 and annually thereafter, the sums set forth in this subsection shall be adjusted annually to reflect the increase in the Consumer Price Index for the previous 12 month period."

This addition is required in order to properly index the damage ceiling against future inflationary pressures.

17. Section 111(b)(2)

The last sentence of this subsection should be eliminated. It is axiomatic that the project operating criteria will have to be consistent with the final decrees in United States v. Orr Water Ditch Co. and United States v. Alpine Land and Reservoir Co. Therefore, any further reference to those decrees is unnecessary. The Pyramid Lake Tribe does not agree that project operating criteria must or should be subject to Nevada law. This provision would at least arguably change existing law to the detriment of the Pyramid Lake Tribe. It should be eliminated from the proposed settlement legislation so that the parties are left free to negotiate project operating criteria based upon existing conditions and their current bargaining positions.

This proposed change principally affects the Tribe and the Truckee-Carson Irrigation District (TCID). The Tribe and TCID have not yet been able to reach agreement on a mutually acceptable provision.

18. Section 112

This section should be eliminated. If this provision is included in the legislation, the Tribe's ability to collect damages for the Secretary's failure to deliver certain quantities of water in accordance with Section 104 of the Act, would be rendered illusory. In order to make the damage provision, and, therefore, §104 meaningful, this section must be eliminated. Section 112 also negates other provisions of the bill under which the Secretary might become obligated to undertake other projects such as a rehabilitation and betterment program for the Newlands Project, the acquisition of water rights, the modification of the Marble Bluff Dam and Fishway, and mitigation of the wildlife areas adjacent to the Newlands Project.

The Nevada parties have agreed that Section 112 should be eliminated.

19. Section 113 and 114

Sections 113 and 114 should be renumbered Sections 112 and 113 to reflect the elimination of previous Section 112.

20. Section 204

This additional provision, which the Tribe believes is absolutely critical to achieving the purposes of the settlement legislation was proposed by the Tribe at the August 20, 1985 meeting and has been accepted by all of the Nevada parties except the State of Nevada. The reasons for the Tribe's insistence on this addition are discussed in my prepared statement.

SPECIFIC COMMENTS OF THE
PYRAMID LAKE PAIUTE TRIBE OF INDIANS
ON TITLE II OF S. 1558
THE CALIFORNIA-NEVADA INTERSTATE COMPACT

ATTACHMENT C

TO

PREPARED STATEMENT OF

MICHAEL R. THORP

ATTORNEY FOR THE PYRAMID LAKE
PAIUTE TRIBE OF INDIANS

ON

S. 1558 (99TH CONG. 1ST SESS.)

BEFORE THE SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES

October 21, 1985

The Tribe's comments on the specific provisions of the proposed Interstate Compact are as follows:

Article I

The significant federal investments and federal interests in the Truckee, Carson and Walker River watersheds demand that the United States assume a full participating role in the Compact. The purposes article should be modified to recognize such a role if the Compact is to be binding on the United States and the affected Indian tribes.

Article III

This Article should be modified to recognize rights of the United States and of the Indian tribes, including the Pyramid Lake Tribe, which are affected by the proposed Compact.

Article IV

Because of the substantial federal interest in the areas affected by the Compact, this Article should be revised to permit full and equal representation on the Compact Commission by the federal government. Each state and the federal government should be given an equal vote on all matters coming before the Commission with each party having a right to veto. Moreover, the formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Paiute Tribe for Truckee River water. The Compact does not provide, however, for Tribal representation. Therefore, the article should be revised to provide for representation of the Pyramid Lake Tribe on the Compact Commission.

Article V

This Article deals with the allocation of water within the Lake Tahoe basin. The major provision of Article V permits total gross diversions of 34,000 acre feet annually for use within the Lake Tahoe basin of which 23,000 acre feet are allocated to California and 11,000 acre feet are allocated to Nevada. The allocation of 34,000 acre feet is premised upon the construction of an overflow weir with a crest elevation of 6223 feet. The construction of such a weir would develop additional water from Lake Tahoe by enlarging the overflow cross-section of a present natural physical barrier above the out-flow works which restricts the rate of flow between elevations 6225 and the low water mark of 6223 feet. It is doubtful, however, whether the overflow weir will ever be built. The 34,000 acre foot allocation within the Lake Tahoe basin should be reassessed in view of this contingency.

Article V results in a taking of the Pyramid Lake Tribe's reserved water right to the unappropriated waters of the Tahoe and Truckee River basins. The Federal District Court for the Eastern District of California has ruled that the Tribe's claim to such unappropriated water is not barred by res judicata under the Supreme Court's 1983 decision in Nevada v. United States. The Tribe's claims to the unappropriated waters in California are not saved or protected either by Article XVIII(C) or Article XXI. The protection afforded by Article XVIII(C) is expressly limited to suits to establish rights within the allocations to each state. Under this provision, the Tribe would be able to establish its right to the unappropriated waters in Nevada, but not in California. The protections afforded by Article XXI are expressly made subject to the provisions made binding on the United States and Indian tribes in Article XXII which include the articles allocating the unappropriated waters of the Tahoe and Truckee Basins to California.

Article V also confirms to United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet. However, storage rights of the United States in Lake Tahoe run to the maximum elevation of Lake Tahoe as expressed in the 1915 Tahoe decree. The figure 6229.1 feet is not descriptive of the maximum storage rights of the United States as provided in the 1915 decree, but is mentioned in the agreement known as the Truckee River Agreement of June 13, 1935. Therefore, the storage rights of the United States in Lake Tahoe stated in the proposed Compact should be as those rights are defined in the 1915 Lake Tahoe Decree. Section C of Article V is in conflict with existing court decrees and should be deleted.

Subsection F of Article V should also be modified. That subsection imposes limitations and constraints on possible pumping from Lake Tahoe for the benefit of downstream users in the event of a drouth emergency. This provision may make it more difficult to reach agreement or might conflict with an agreement on an overall river management plan which would include the possibility of pumping from Lake Tahoe during drouth emergencies.

Article VI

This Article of the proposed Compact allocates the waters of the Truckee River. There are several things wrong with the proposed allocation.

First, Article VI fails to recognize that the waters of the Truckee River are already fully appropriated. By failing to recognize that the Pyramid Lake Tribe has a legitimate claim to a reserved water right to the unappropriated water of the Truckee River and that the Pyramid Lake Fishery is currently utilizing and relying upon that water, the Compact allocates additional water, primarily to the State of California. For example, California is given the right to divert 10,000 acre feet per year, which may be stored when the flow in the channel of the Truckee River exceeds the Floriston rates of 500 or 400 cubic feet per second. Moreover, California would be allowed to develop additional yields of water subject to the then existing beneficial uses in California. The beneficial use recognized in the Compact for this purpose for the Pyramid Lake Indian Reservation, however, would be the amount stated in the Orr Ditch Decree for agricultural use plus such additional domestic or municipal water as may then have been developed. No recognition of water for fishery purposes is included.

Thus, the allocation set forth in Article VI of the Compact is in direct conflict with the reserved water right of the Pyramid Lake Tribe to the unappropriated water of the Truckee River for fishery purposes. In this respect, Article VI is subject to the same deficiency as Article V. It is also in direct conflict with the Endangered Species Act as that Act requires maintenance and preservation of the water currently being used to maintain the endangered and threatened species of Pyramid Lake.

Article VI also allocates to California 6,000 acre feet annually from the conservation yield of Stampede Reservoir. This provision is in direct conflict with the federal government's current policy to utilize the waters of Stampede Reservoir for maintenance of the Pyramid Lake Fishery, with the provisions of the Endangered Species Act and with the final judgment entered in Carson-Truckee Water Conservancy District v. Secretary of the Interior, CV-R-76-152-GJS (D. Nevada).

Article VII

This Article allocates the waters of the Carson River. This article is unacceptable because it would increase upstream acreage on the Carson River with rights ahead of the Newlands Reclamation Project by approximately 9,000 acres. This increase is not acceptable because it would make necessary greater diversions from the Carson River, therefore resulting in less Carson River water reaching the Newlands Reclamation Project. This would require greater diversions from the Truckee River to the Newlands

Project to make up the deficiency and would adversely affect Pyramid Lake.

The Pyramid Lake Tribe asked its expert hydrologic consultant, Stetson Engineers, Inc., to prepare a report analyzing and comparing the Carson River provisions of the proposed Compact with the upper Carson River water rights under the 1980 Final Decree in United States v. Alpine Land & Reservoir Co. Stetson's results are reported in its letter of September 27, 1985 to Tribal Chairman Wilfred Shaw, a copy of which is attached. Stetson concluded that the proposed compact provides much more water to the lands of the Upper Carson River in both Nevada and California than the water rights for those lands in the Final Decree. This over-allocation and waste is very detrimental to Pyramid Lake because it would mean that less Carson River water will flow into Lahontan Reservoir and consequently that more Truckee River water will be diverted to the Newlands Project.

This Article should be rewritten to provide for recognition of the final decree in United States v. Alpine Land and Reservoir Company. That decree and the operating criteria and procedures for the Newlands Reclamation Project make plain that the waters of the Carson River are fully appropriated. The Compact should not allow any additional development of water in the Carson River basin.

Article XI

This Article deals with the coordination of reservoirs. It authorizes the Compact Commission to prepare plans for the coordination of reservoirs. The parties to the Truckee River-Pyramid Lake settlement negotiations have concluded that a program for coordination of the reservoirs, especially Lake Tahoe and Stampede Reservoir, is essential to achieving a negotiated settlement. It would appear that any settlement reached by the parties with regard to reservoir management could be overridden by the Compact Commission at a later time. This would be unacceptable and Article XI should be amended to insure that any reservoir coordination agreement reached in connection with the Truckee River-Pyramid Lake settlement would not be subject to being changed by the Compact Commission.

Articles XXI and XXII

Article XXI purports to protect the rights of the United States and its wards. However, Article XXII, which is excepted from the coverage of Article XXI, requires that the United States agree that the 14 critical paragraphs of the Compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian water rights for Pyramid Lake. Moreover, through cross references to other sections in the Compact, the United States would be bound to still other provisions. Article XXII (3) therefore should be deleted.

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September 27, 1985

REPLY TO: San Rafael

Mr. Wilfred Shaw
Chairman of Pyramid Lake Paiute Tribe
P.O. Box 256
Nixon, Nevada 89424

Dear Mr. Shaw:

We have reviewed the portion of California-Nevada Interstate Compact relating to the Carson River Basin. Provisions are made under the Compact to allocate the water of the Carson River and its tributaries in the order of priority between the States of California and Nevada. As you know, the California-Nevada Interstate Compact has not been ratified by the Congress of the United States.

We have also reviewed the Final Decree in *United States v. Alpine Land and Reservoir Company, et al.*, Equity No. D-183 BRT, hereinafter, referred to as Alpine Decree. The decree deals with the adjudication of water rights on the Carson River and its tributaries in both the States of California and Nevada. The Alpine Decree has been in effect and court appointed Water Masters have been administering the provisions of that Decree.

In comparing the provisions of the Interstate Compact in the allocation of Carson River water with those provisions decreed under the Alpine decision, we find a number of discrepancies in the Compact. If the Compact is administered in its present form, it will affect the availability of the Carson River water to the Newlands Project and consequently affect the availability of Truckee River water for fishery in the lower reaches of Truckee River and Pyramid Lake. The provisions for allocation of the water of Carson River and its tributaries under the Interstate Compact and the Alpine Decree are briefly reviewed, as follows.

The Interstate Compact provides the right to divert from the natural flow of the Carson River and its tributaries for existing non-irrigation uses and for direct irrigtion use commencing on March 15 and ending on October 31 of each year. The diversion rights of the Carson River are divided between California and Nevada in the following manner.

1. The allocation to the State of California is based on diversions from the West Fork and East Fork of the Carson River and thier tributaries.

   a. The right to divert from the natural flow of the West Fork Carson River and its tributaries is limited to 3.0 cubic feet per second (cfs) per 100 acres of irrigable lands. The area of irrigable lands with diversion rights on the West Fork Carson River and its tributaries in California were determined to be approximately 5,600 acres. The flow rates may vary from 3.0 cfs on a daily basis so long as the aggregate flow of water over a 30-day period averages to about 3.0 cfs per 100 acres of irrigable lands or 168 cfs for the area as a whole. Based on the limit of 3.0 cfs per 100 acres, the amount of water that potentially can be diverted during the irrigation season may total to 13.75 acre-feet per acre, provided the supply of water would be available in the West Fork Carson River and its tributaries. Based on established greater rate of diversion, maximum diversion allowance of 185 cfs is provided in the Compact for this area.

   b. The right to divert from the natural flow of the East Fork Carson River and its tributaries for existing non-irrigation uses and for direct irrigation use is also 3.0 cfs per 100 acres of irrigable lands. The irrigable lands for this area were determined to be approximately 3,820 acres. The total diversion from the East Fork Carson River and its tributaires in California is limited to 115 cfs. Again, the amount of water that can be potentially diverted during the irrigation season may reach up to 13.75 acre-feet per acre provided there is an adequate supply of water in the East Fork Carson River.

2. The allocation to the State of Nevada was based on diversions from the Carson River and its tributaries for use on presently irrigated lands located above Lahontan Reservoir. The area of irrigated lands in this reach of the Carson River was determined to be approximatley 41,320 acres. The right to divert water from the natural flow of the Carson River and its tributaries is limited to an average rate of 3.0 cfs per 100 acre of irrigated land or a total of 1,220 cfs. The diversions are limited to the irrigation season extending from March 15 through October 31 of each year. The aggregate diversion is limited to 1,220 cfs in Nevada, upstream of Lahontan Reservoir, provided that the flow measured at the points of diversion do not exceed 700 cfs on the East Fork Carson River, 300 cfs on the West Fork Carson River, and 220 cfs on the main Carson River below the confluence of the East and West Forks. Assuming that there would be an adequate supply of water to meet a diversion demand of 3.0 cfs per 100 acres through the irrigation season, then the amount of water that can be potentially diverted for this purpose may reach up to 13.75 acre-feet per acre.

Part of the water diverted from the Carson River and its tributaries for irrigation is returned back to the main course by drainage and other means which, in turn becomes available for diversion in the lower reaches of the river. Based on the diversion limits provided in the Interstate Compact, for the Carson Basin, the water duty may reach up to 13.75 acre-feet per acre of irrigated lands in California and Nevada upstream of Lahontan Reservoir. The water duty would remain the same for the land independent of the soil characteristics.

The Alpine Decree provides for varying diversion limits from the Carson River and its tributaries for lands lying above the Lahontan Reservoir. According to the Decree, the provisions for water duties are 4.5 acre-feet per acre diverted to the canal for the bottom lands, 6.0 acre-feet per acre diverted to the canal for the alluvial fan lands and 9.0 acre-feet per acre diverted to the canal for the bench lands. The water duties assigned for the various types of land are the total duties from whatever source of surface water. This is interpreted that the assigned duties for diversion from Carson River and its tributaries to canals could include drainage water, return flows, springs and releases from local reservoirs.

The primary difference between the provisions of the Interstate Compact and the Alpine Decree is in the amounts of water duty or maximum diversion allocation per acre of irrigable land. Based on the diversion limits provided under the Compact the diversions from the Carson River and its tributaries may reach up to 13.75 acre-feet per acre of irrigable lands. Whereas, the diversion allowances under the Alpine Decree are 4.5, 6.0 and 9.0 acre-feet per acre for irrigable areas classified as bottom, alluvial fan and bench lands, respectively.

In comparing the water duties under the Interstate Compact and the Alpine Decree, it is concluded that there could be substantial overdiversion under the provisions of the Compact. The amounts of overdiversion may range from 4.75 acre-feet per acre for bench lands and 7.75 acre-feet per acre for alluvial fan lands to 9.25 acre-feet per acre for the bottom lands.

Diversions from the East and West Forks of the Carson River and its tributaries in California are considered to be for bench lands. When adequate water supplies are available in these streams during the irrigation season, the amount of overdiversion under the Compact, as compared to the duties provided under the Alpine Decree, could reach up to approximatley 45,000 acre-feet in California. Diversions in Nevada are for a combination of soil types classified as bottom, alluvial fan and bench lands. Most of the irrigable areas are bottom and alluvial fan lands, in Nevada upstream of Lahontan Reservoir. Assuming that an adequate water supply would be available for diversion in Carson River and its tributaries during the irrigation season, the amount of overdiversion under the Compact may reach in the order of 200,000 to 300,000 acre-feet. However, the water supply for such amounts of overdiversion will not be usually available in the stream. Therefore, the actual amounts of overdiversions are considered to be significanly less than the above figures. These estimates were based on the differences between the potential maximum diversions under the Compact and claculated diversions based on water duties provided under the Alpine Decree.

A portion of the overdiverted water would return back to the Carson River by means of drainage and tail water recovery. However, overdiversions generally contribute to waste, depletion of supply, deterioration of water quality and possible delay in availability of supply to downstream users. Based on provisions of the Interstate Compact, as compared to the Alpine Decree, the supply of Carson River water reaching to the Newlands Project would be further depleted. A reduction in supply of Carson River water to the Newlands Project would generally require an increase in diversion of water from the Truckee River to the Newlands Project. Any increases in diversion from the Truckee River to the Newlands Projects reduces the supply of water to the lower Truckee River below Derby Dam and Pyramid Lake. It is important that the provisions of the Interstate Compact in the allocation of the water of the Carson River and its tributaries are in harmony with the Alpine Decree so that potential adversities to supply of water in the lower Truckee River and Pyramid Lake are minimized.

There are other discrepancies between the Compact and the Alpine Decree, but they are not considered to be relatively significant to the lower Truckee River and Pyramid Lake. However, a source of discrepancy exists that may be of an interest to water users on the West Fork of the Carson River. It relates to the timing of rotation between California and Nevada in diverting the natural flow of West Fork Carson River. According to the Compact, after the first Monday in May until October 31, whenever the flow of West Fork at the western boundary of Section 34 (Township 11 North, Range 19 East, MDBM) falls below 175 cfs, the diversion of water from the West Fork downstream of the western boundary would be subject to weekly rotation by California and Nevada. The flow near the western boundary is measured by the U.S. Geological Survey. The gauging station for flow measurment is located at Woodfords in California. The water users in California diverting from the West Fork Carson River downstream of the western boundary would rotate all or any portion of the natural flow of West Fork Carson River necessary to satisfy the demand of Nevada lands with water users in Nevada every-other week. Stockwater, domestic water and water for fire protection purposes would be excepted from the rotation.

Whereas, under the provisions of Alpine Decree the rotation starts on the first Monday in June instead of the first Monday in May and the rotation is not triggered by the flow condition in the West Fork Carson River as measured by the gauge at Woodfords.

Please call if there are any questions or additional information is needed.

Sincerely,

Ali Shahroody

AS:teh

cc: Robert S. pelcyger, Esq.
Michael Thorp, Esq.

RESPONSE OF PYRAMID LAKE PAIUTE TRIBE OF INDIANS TO ORAL AND WRITTEN TESTIMONY

ON

THE PYRAMID LAKE PAIUTE AND TRUCKEE
RIVER SETTLEMENT ACT OF 1985

H.R. 3213 (99TH CONG. 1ST SESS).

BEFORE THE HOUSE COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS

S. 1558 (99TH CONG. 1ST SESS.)

BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS AND THE SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

On Monday, October 28, 1985, the Pyramid Lake Paiute Tribal Council passed a resolution opposing the enactment of any settlement legislation including S. 1558 and H.R. 3213 and rescinding any prior resolutions inconsistent with that position. Unless changed by the Tribal Council or a vote of the tribal members through the Tribe's referendum process, that is the official position of the Pyramid Lake Tribe.

In order to insure that the record of the hearings on S. 1558 and H.R. 3213 are complete, the Tribe is providing the following response to oral and written testimony on the bills as presented before the House Interior and Insular Affairs Committee on October 3, 1985, the Senate Select Committee on Indian Affairs on October 2, 1985 and the Senate Committee on Energy and Natural Resources on October 21, 1985. Nothing in this response, however, should be taken as any form of approval or endorsement of the proposed legislation. This response is provided simply to clarify and correct certain erroneous statements which were made by others at the hearings.

Written Statement of Senator Mark Andrews.

Page 1. The second paragraph seems to indicate that the Walker River Basin is included in the settlement sought to be reached through S. 1558 and H.R. 3213. Although the Walker River Basin is affected by ratification of the California - Nevada Interstate Compact, it is not affected by Title I of the bills.

The cui-ui has been designated as an endangered species pursuant to the Endangered Species Act. The Lahontan cutthroat trout has been designated as a threatened species.

Written Statement of Senator Paul Laxalt.

Page 1. S. 1558 does not "require the completion of an operating agreement for Stampede Reservoir, so the implementation of the legislation is based on that contingency." Section 107(a)(6) requires an agreement providing for best utilization of available reservoir storage to carry out certain of the Secretary's obligations including obligations under §§105(b), (c), (d), and (g). Those subsections of §105 authorize but do not require the parties to enter into an agreement to provide municipal and industrial water for Reno and Sparks from Stampede Reservoir.

Written Statement of Congressman Harry Reid.

Page 4. The statement that S. 1558 and H.R. 3213 would grant Nevada and California the rights to surplus water is incorrect. Under this proposed legislation, California would receive the amount of Truckee River water allocated to it in the Interstate Compact or such lesser amount as California may agree to during the settlement negotiation process. The Pyramid Lake Tribe would receive the unappropriated or surplus water of the Truckee River in Nevada.

Oral Statement of Governor Richard Bryan.

During the oral testimony of Governor Bryan, the Governor was asked whether the addition of §204 to Title II of S. 1558 would require reauthorization of the Compact by the Nevada Legislature. The United States Supreme Court has stated that when Congress attaches conditions to the ratification of interstate compacts, the states who are parties to the compact can assume those conditions simply by accepting and acting under the compact. Petty v. Tennessee - Missouri Bridge Commission, 359 U.S. 275, 281 (1959). It would appear that no formal action by the states would be necessary.

During his testimony, Governor Bryan stated that in the state's view the issue of ownership of the bed of Pyramid Lake and the bed of the lower Truckee River on the Pyramid Lake Reservation is moot. The state's view is based upon the fact that the state filed suit against the federal government to quiet title to the bed of Pyramid Lake and of the lower Truckee River but the claim was rejected by the federal courts on the grounds of sovereign immunity of the United States and that the federal 12-year statute of limitations had run. If the issue is indeed moot then the State of Nevada should be willing to relinquish any remaining claim that it might have to the lake bed or river bed. In that way the state could greatly advance the prospects for settlement while at the same time giving up nothing.

Senator Gorton asked Governor Bryan whether the Truckee River water quality lawsuits would be settled if S. 1558 were enacted. The answer to that question is no. Two water quality lawsuits brought by the Pyramid Lake Tribe are currently pending. A third lawsuit resulted in a consent decree and the federal district court in Reno has continuing jurisdiction over that decree for compliance purposes. Due to the fact that the subject matter of those lawsuits is so different from the subject matter of the litigation sought to be ended through S. 1558, the necessity of adding other parties to the settlement negotiations, if water quality is included, and the potential involvement of other committees of the Congress, it was decided by the parties that the best course would be to exclude the water quality lawsuits from the current negotiations.

Written Statement of Robert N. Broadbent.

Page 2. The goal of the settlement legislation is not "ensuring the survival of the Lahontan cutthroat trout and the cui-ui." The goal of the legislation is to ensure the recovery of these fish species. That means bringing the species back to the point that they no longer would be classified as endangered or threatened species and would no longer need the protections of the Endangered Species Act.

Pages 11 and 12. At pages 11-12 of his testimony, Assistant Secretary Broadbent states that Pyramid Lake has stabilized under existing circumstances. That statement is misleading. It is true that the Lake remained relatively constant from 1966 through 1981 and has increased approximately 20 feet since 1981 to its current elevation of 3,811 feet. But that occurred during a relatively wet period. Based on the existing level of upstream diversions, the Tribe's hydrologist estimates that Pyramid Lake would decline an average of about one foot a year in the event of a repetition of the 43 year hydrologic cycle that occurred between 1925 and 1967. That is the crucial period so far as the Pyramid Lake fishery is concerned because the fish and the Lake must be able to survive and remain viable during sustained dry periods.

Written Testimony of Roland D. Westergard.

Page 2. The Pyramid Lake Tribe disagrees with the statement that the legislation "recognizes that it will be necessary to modify *Carson-Truckee Water Conservancy District v. Clark*, 741 F.2d 257 (9th Cir. 1984) to provide municipal and industrial water for the Reno-Sparks area." It is possible, through river operation and reservoir coordination agreements, to provide municipal and industrial water to Reno and Sparks through the use of sources other than Stampede Reservoir. No modification of the Stampede Reservoir decree would be necessary or agreed to by the Tribe.

Oral Testimony of Roland D. Westergard.

During Mr. Westergard's oral testimony, he stated that while the Pyramid Lake Tribe was not a party to the California-Nevada Interstate Compact negotiations, representatives of the Tribe were in frequent attendance. He also stated that the Tribe was repeatedly asked to participate in the negotiations but declined the opportunity. The Pyramid

Lake Tribe takes issue with those statements. Representatives of the Tribe were not in "frequent attendance" at the Compact negotiations. The Tribe was never asked to participate in the negotiations. See Attachment C to Prepared Statement of Michael R. Thorp.

The Tribe believes that Mr. Westergard has confused the negotiations over the Compact and the Pyramid Lake Task Force. Representatives of the Tribe did attend meetings of the Pyramid Lake Task Force and while the Tribe was asked to participate on the Task Force, the Tribe declined. It would appear that Mr. Westergard's remarks are more properly directed toward the Pyramid Lake Task Force than the Compact negotiations.

Oral Testimony of Joe L. Gremban.

During his oral testimony, Mr. Gremban referred to §105(a)(7) which would authorize the Secretary to offset power losses or reimburse persons or entities as necessary to compensate for power losses. The legislation should make it clear that such compensation is not paid out of the settlement fund. Any such compensation should be provided by the general Department of the Interior operating budget or special appropriation. This is also true of any payments made pursuant to §§105(i) and (j).

During his oral testimony, Mr. Gremban stated that the language "or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company and the

Carson-Truckee Water Conservancy District" which is included following the figures provided in §§105(c) and (d) was included so that it would be possible for the parties to agree to water in addition to the amounts actually set forth in those sections. That is not correct. The purpose of the language was to leave completely open the question of how much water, if any, the Carson-Truckee Water Conservancy District will obtain from Stampede Reservoir. The bill does not guarantee any water from Stampede Reservoir for M & I use in Reno and Sparks. Instead the bill sets up a mechanism whereby the parties can negotiate a reservoir coordination program to meet everyone's needs. Obviously, in order to obtain the agreement of the Carson-Truckee Water Conservancy District and the Sierra Pacific Power Company, water must be provided for M & I use in Reno and Sparks. The bill does not require, however, that Stampede Reservoir be specifically used for that purpose. Therefore, §105 has been drafted to leave entirely open the question of how much water, if any, is devoted to M & I purposes at Stampede Reservoir.

Written Testimony of Robert Firth.

A history of the Washoe Project Act and the construction of Stampede Reservoir is contained in Carson-Truckee Water Conservancy District v. Secretary of the Interior, 537 F. Supp. 106 (D. Nev. 1982); 549 F. Supp. 704 (D. Nev. 1982); aff'd 741 F.2d 257 (9th Cir. 1984); cert denied, 53 U.S.L.W. 368 (March 26, 1985).

Mr. Firth is correct in his statement at page 10 that since its construction Stampede has not been used for M & I use. Instead, Stampede Reservoir has been used for flood control, recreation and fish and wildlife purposes. It is not correct to say that Stampede has been operated "to support fishery experiments only." Releases from Stampede Reservoir have been made as necessary to support spawning runs of cui-ui and Lahontan cutthroat trout in the lower Truckee River. These spawning runs, especially those of the cui-ui, have been critical in the effort to maintain the species.

Written Testimony of Jim King.

As set forth earlier, the proposed legislation does not mandate that the Cities of Reno and Sparks receive municipal and industrial water from Stampede Reservoir. How much municipal and industrial water is provided to the Cities and the source of that water will be the subject of negotiation between the parties.

Written Testimony of James Spoo and Dave Howard.

Page 3. §107 of the proposed legislation does not require the agreement of the Cities of Reno and Sparks to any of the actions which would result in the provisions of the legislation going into effect. Particularly, the bill does not require that the Cities agree to the reservoir coordination agreement.

In their statement, Mr. Spoo and Mr. Howard assert that if the Cities are prohibited from discharging effluent into the

Truckee River, the Truckee River could be deprived of up to 45,000 acre-feet per year of water. The Committee should be advised, however, that one of the alternatives to direct discharge of effluent into the Truckee River is piping that effluent to the Truckee Canal. If that were done, the effluent would no longer flow to Pyramid Lake and, instead, water normally diverted by the Truckee Canal to the Newlands Reclamation Project would be substituted for that effluent. The net result would be that Pyramid Lake would receive the same amount of water and the water would be of much better quality.

Written Testimony of Leslie B. Gray.

Page 4. In his statement Mr. Gray alleges that "capital improvements at Pyramid Lake have approximated $100 million ... ." That figure is incorrect. Capital expenditures for fishery purposes on the Pyramid Lake Reservation have included the construction of Marble Bluff Dam and Fishway and the three fish hatcheries currently run by the Pyramid Lake Tribe. These capital improvements have been substantially less than the $100 million figure mentioned by Mr. Gray.

Written Statement of the National Audubon Society.

Page 2. The dominant year class in the cui-ui population is currently the 1969 year class not the 1967.

The Pyramid Lake Tribe disagrees that the Lahontan cutthroat trout population can be secured only through hatchery efforts. The Pyramid Lake Tribe now has underway extensive efforts to reestablish Lahontan cutthroat trout spawning in the lower river. It will be a number of years before the Tribe will know whether or not those efforts have been successful but until we do know, it is much too early to abandon natural spawning of the trout.

Pages 6-7. Stillwater Wildlife Refuge and Carson Lake Pasture are currently maintained through excessive diversions of water from the Truckee River and illegal releases of water from Lahontan Reservoir. The Tribe strongly objects to any language in the settlement legislation which would recognize any "water rights" in the Stillwater Wildlife Refuge or Carson Lake Pasture. The Tribe has no objection to these areas continuing to receive tailwater from an efficiently run Newlands Reclamation Project. However, under no circumstances should water ever be diverted from the Truckee River or released from Lahontan Reservoir for these areas.

The Pyramid Lake Tribe has recently been informed that the staff of the Senate Select Committee on Indian Affairs and the House Committee on Interior and Insular Affairs are in the process of compiling a series of questions concerning the statements made at the hearings on S. 1558 and H.R. 3213 and the amendments which have been offered by the parties. The Pyramid Lake Tribe will therefore defer submitting comments on the proposed amendments at this time.